LIFE IN THE LAW

BY JOHN GEORGE WITT, K.C.

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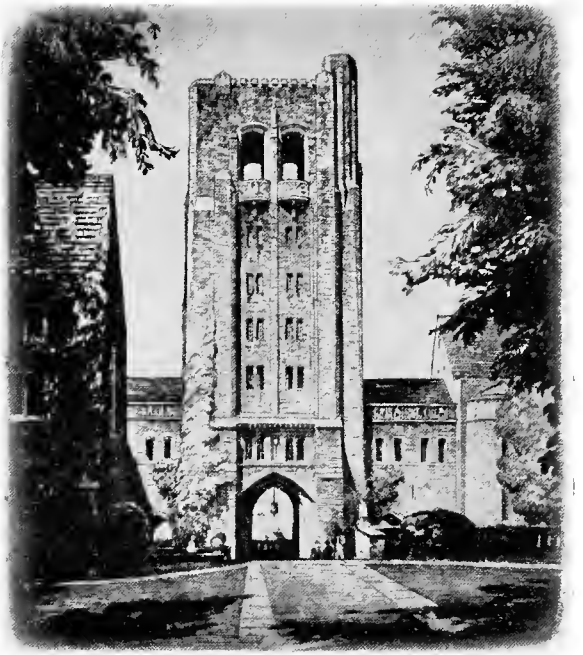

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LIFE IN THE LAW

BY

JOHN GEORGE WITT, K.C.

BENCHER OF LINCOLN'S INN

Formerly Senior Fellow of King's College, Cambridge

ILLUSTRATED

T. WERNER LAURIE

CLIFFORD'S INN

LONDON

I DEDICATE THIS BOOK

TO

MY FRIENDS AND COLLEAGUES

THE BENCHERS OF LINCOLN'S INN

CONTENTS

LIFE IN THE LAW

CHAPTER I

EARLY DAYS

I HAD no encouragement to be a barrister. When I was nine years old I went on a visit to a relative noted for her sour and uncomfortable disposition. In a burst of confidence I told her that I intended to be a barrister. "A briefless one no doubt," was her cheerful reply.

Later on I tried the other side. Now my mother's family were of the men of Devon, and they boasted first that not one of them had ever been a lawyer. They had been parsons, landowners, farmers and sportsmen time out of mind. One hundred years ago old Mrs Tucker of Exeter said that her grandson was to be a lawyer. "Why," said my uncle, "whatever has the poor boy done that you should sell his soul to the evil

one?" In later years and in his extreme old age he said to me—"My dear boy, I suppose you rob a rare lot of people between one year and another. I am an old man and I have known many lawyers, and I never met an honest one yet." None of these survive, so that I cannot now ask them to reconsider their verdict. Perhaps their spirits take a kindlier view.

The first matter of law that I can remember was the murder committed by Tarvell, the Quaker, at Salt Hill. Dr Champneys of Slough was called in to see the victim, and having satisfied himself that the woman had been poisoned by Tarvell he went to the Great Western Railway Station at Slough and sent a telegraphic message to Paddington, with the result that Tarvell was arrested. My eldest brother was at that time a pupil of the Rev. Charles Champneys at Milton near Cambridge. Mr Champneys came over to our house at Denny Abbey, and told us the tale of his brother's achievement, to which I listened with breathless interest. It is certain that this was the first case in which the telegraph had been used to catch a criminal, and the news was spread far and

wide in the Press. Tarvell was tried at Aylesbury Assizes, and the Quakers made great efforts to get him acquitted. They retained Mr William Bevan as solicitor, and Mr Fitzroy Kelly as counsel, to defend the man, and Mr Kelly ran the case on the theory that the prussic acid found in the body got there by the woman eating apple pips. He must have been a great actor to command his countenance while addressing the jury on this hypothesis. Mr Kelly did not go so far as to suggest that the apple pips killed the woman, his contention being that her death was not due to poison.

In after years, and while I was a boy at Eton, I used to dine with Dr Champneys. I was for many years, when living in London, on intimate terms with Mr Bevan. I have practised before Chief Baron Kelly, and I also knew Mr Charles Head, of turf and theatrical renown, who was the operator at the instrument when the message was sent from Slough.

The tale of the murder of Mr Jermy at Stansfield Hall by farmer Rush has been told over and over again, and as a child I remember the excitement which the crime

created all over the eastern counties. Mr O'Malley, Q.C., used to describe in vivid language the scene at the trial before Baron Rolfe at Norwich Assizes, when the prisoner endeavoured to overawe with his cruel eye the wounded servant as she was being carried into court to give evidence, and how the prisoner would have had some chance of acquittal if the lady who lived at his house had been his wife, and thereby had been excused or prevented from giving evidence against him. Rush insisted on conducting his own defence, and the public actually believed that the horror at his crime was so intense and universal that no one at the Bar would undertake the duty of defending him. Baron Rolfe became Lord Chancellor Cranworth on the fall of Lord Westbury, and it is an undoubted fact that Her late Majesty said to Lord Cranworth on his promotion, "Now you see how much better it is to be honest than clever." I suppose that this is the only instance on record in which Queen Victoria meant to say the right thing and managed to say the wrong.

The next law case that I can remember was that of a man named Edward Smith, who

resided at Fen Ditton near Cambridge, and whose proper trade was that of a gardener. He was gifted with a fine ear for music and for gossip. He used to come to our house at Denny Abbey and perform on the violin when we had a dance. We all liked him for the pleasure he gave us. However, a sad fate befell him. In his idle hours at the alehouse he had said things which had better have been left unsaid about the wife of the rector of his parish. Thereupon, in 1847, the lady instituted a suit of defamation against him in the ecclesiastical court, and the talent of no less a person than Sir Herbert Jenner Fust, Dean of the Arches, was brought to bear upon the unlucky fiddler. That most learned judge made the following decree, which the custodian of the Probate Library found for me on the top storey of No. 1, "The Sanctuary," Westminster, my previous searches at Ely, Norwich, Somerset House and elsewhere having proved useless. Here it is, "James against Smith. In pain, etc., for informations and sentence," and the certificates of the decrees are continued. In pain of Edward Smith the party cited therein called and not appearing Brickwood

prayed the judge to pronounce that he had sufficiently proved the contents, the libel by him given in, and admitted on the part and behalf of Martha James (wife of the Reverend William Brown James, clerk) his, Brickwood's, party, and prayed that he, the said Edward Smith, may be duly and canonically corrected and punished, and that he may also be condemned in the costs of this suit. The judge having heard the evidence read, and an advocate and the proctor on behalf of the said Martha James thereon, by interlocutory decree, having the force and effect of a definitive sentence in writing, pronounced that Brickwood had sufficiently proved the contents of the libel by him given in and admitted on the part and behalf of Martha James, wife of the Reverend William Brown James, clerk, his, Brickwood's, party, and that the said Edward Smith did at the times and places libellate maliciously, utter, publish, and report several scandalous, reproachful and defamatory words as libellate, tending to the reproach, hurt and diminution of the good name, fame and reputation of the said Martha James, and that the said Edward Smith ought to be canonically

corrected and punished, and did order and direct as a salutary penance for his demerits that he, the said Edward Smith, shall on Sunday, the sixth day of May next ensuing, immediately after Divine service and sermon are ended in the forenoon, go into the vestry room or church of the said parish of Fen Ditton, and in the presence of the minister or officiating minister of the said parish, and likewise in the presence of the said Martha James, and five or six of her friends, if they be there, otherwise in their absence, shall with audible voice confess and say as follows: "Whereas I, Edward Smith, have uttered and spoken certain scandalous and opprobrious words against Martha James, wife of the Reverend William Brown James, clerk, rector of the parish of Fen Ditton in the county of Cambridge, to the great offence of Almighty God, the scandal of the Christian religion, and the injury and reproach of my neighbour's credit and reputation by calling her a ——, and using other defamatory words of and against her, I therefore before God and you humbly confess and acknowledge such my offence, and am heartily sorry for the same and do ask forgiveness, and

promise hereafter never to offend her in like manner, God assisting me." And the Judge did direct the said Edward Smith to certify the due performance of such penance on or before the fourth session of this term, to wit Wednesday, the ninth day of the said month of May, and decreed at petition of Brickwood a monition to issue accordingly, and moreover condemn the said Edward Smith in costs and assign to him on taxation thereof the next court, Brickwood having first brought in bill of costs.

But it is one thing to make a nonsensical decree, and another to get it executed. From an early hour on the Sunday named in the decree the church was filled with a mob of river cads mixed up with some few young bloods from the University and county. The rector and the slandered lady were in the rectorial pew. Proceedings began with the ascent of a clergyman named Small to the pulpit. He was received with cat-calls and shouts of "Speak up, old boy," and a smart volley of hassocks was hurled at his head. The penitent then entered, clothed in a white sheet with a candle in his hand. His appearance evoked "Three cheers for

Smith," while he waved his recantation over his head. A dog fight came next to add to the uproar and confusion, and at last the Reverend Mr Small gave up his task as hopeless. Then a part of the mob seized Edward Smith, and with one cheer more raised him aloft and carried him in triumph to the Plough Inn, where the afternoon was spent in drinking his health and confusion to the parson, while another part of the mob marched to the Rectory, howling at the rector and his wife, and amused themselves by smashing all the windows in the house. I am quite sure that Brickwood never got his costs out of Edward Smith, and I do not suppose that the slandered lady got much satisfaction out of her suit. It almost passes belief that such things should happen in the Victorian era.

There was tremendous excitement on our side of the county when it became known that Mr Henry Giblin, who resided at Swaffham Bulbeck, had shot at and wounded a burglar. It was a cold night in the depth of winter with six inches of snow on the ground. Considerable sums of money were kept in the counting-house, and by way

of guarding his treasure Mr Giblin had in his bedroom an old-fashioned, double-barrelled blunderbuss loaded with buck-shot. The story had best be told in his own words, as I had it from him. "I heard someone in my yard and I got out of bed as quietly as I could and took up the blunderbuss and went to the window. My wife asked me if she should strike a light. I said to her, 'You keep quiet where you are or I shall shoot you.' I moved the blind a bit on one side and I saw by the light of the full moon a great long-legged rascal creeping down my yard. I up with the window and gave him a view halloa. He bolted back. I waited till he got close to the corner of the house and then let drive at his hinder-part. He screamed and I knew I had hit him. So I shut down the window and got into bed and went off to sleep. When my men came in the morning, I went down to explore, and behold! there were marks of blood from the corner of the house to my front gate, and up to the track of the wheels of a cart. So I went over to the Cambridge borough police, and they very soon found the gentleman in bed in Barnwell, and took him off to Adden-

brooke's Hospital until he was fit to go before the justices. He was sent for trial, and in March I went over to the assizes, and the prisoner was put to the Bar at the Shire Hall before my Lord Chief Baron Sir Frederick Pollock, and I gave my evidence, and when I had done, his lordship turned to me and said: 'Do you mean to tell me that you deliberately shot at this man, when he was outside your house?' 'Well, my lord,' I said, 'I did not wait until he got inside and stole my money and frightened my wife to death.' And the Lord Chief Baron said he thought I ought to have been tried and not the prisoner, and his lordship advised the jury to acquit the rascal, and the jury did not much like it, but they thought they ought not to go against the judge. So they returned a verdict of 'Not Guilty,' and the Lord Chief Baron discharged Long Tom. So I came out of court, and there stood the rascal and his friends grinning at me, and I walked into the middle of the crowd, and then to the top step of the entrance of the Shire Hall, and I said, 'Well, gentlemen, I listened to all the Lord Chief Baron had got to say, and I beg to

give you all notice that the second barrel of the blunderbuss is loaded, and that anyone who comes down my yard at night will find that I can shoot as straight as I did at Long Tom.' And the farmers gave me a loud cheer, and I have had no burglars round my house since that night, and I am sure that a charge of buckshot is better than all the judges and juries and all the rural police to keep rascals from disturbing the sleep of honest men."

The Lord Chief Baron no doubt had in his mind the legal distinction between an attack on a man who is actually committing burglary and on a man who, although intending to commit burglary, is still outside the house. For in Levet's case, Hale, p. 474, it was held that "a man who, making a thrust with a sword at a place, whereupon reasonable grounds he supposed a burglar to be, killed a person who was not a burglar, was held not to be a felon, though he might be killing *per infortunium* or possibly *se defendendo*, which then involved certain forfeitures." In other words, he was in the same situation, as far as regards the homicide, as if he had killed a burglar. But these

nice distinctions of law would not have commended themselves to our worthy neighbour.

While I was a boy at Eton I actually had the audacity to prosecute a man for stealing a football. He was tried at the Quarter Sessions at Aylesbury, and was defended with great ability by Mr Power of the Norfolk Circuit. Mr Power died some few years after he became Queen's Counsel and before I joined the same Circuit. I had two jolly days away from school and was entertained at the Bar mess in the room at the old White Hart, where the horse with his "owner up" had cleared the dining table, decanters, glasses, plates and all for a big wager. The hotel has long ago been pulled down.

The next time that I was in a court of justice was during my student days at King's College, Cambridge. One of our fen farmers was arraigned at the assizes for the murder of his wife, before Mr Justice Wightman. The prisoner was a fine manly fellow, and in spite of the earnest entreaty of the learned judge insisted on pleading "Guilty." He was sentenced to death, and met his doom

with unflinching courage. It was a very sad case. He had gone to market and got drunk, and when he returned home his wife foolishly upbraided him and insulted him, and when he asked her to make the tea, she told him to go back to his friends and drink with them. In his fury he struck her a fatal blow. The court was filled with farmers, for the man was well known, and the fate of these two young people, who had really loved each other, excited immense sympathy. As I was leaving the court I heard a discussion. "Terrible thing," said one farmer, "to kill your wife for a cup of tea." "Yes," said his friend, "but there is nothing so aggravating as a woman who refuses to make you a cup when you are dry." [1]

During my undergraduate days I used to attend the Assize Court at Cambridge, mainly for the pleasure of seeing and hearing the Lord Chief Baron, Sir Frederick Pollock.

[1] Since the above was written Mr Witt prosecuted for the Treasury on January 15, 1906, *in the same court and for the same offence*, a man for murdering his wife under the influence of drink, but there the coincidence ceased. The couple were not on friendly terms, the man did not plead guilty, and though convicted was reprieved.

He was a grand old man, and was much admired in the county. If he had a fault it was that he was too merciful. The chaplain at the gaol had worked a hardened sinner into a better frame of mind, and the repentant one had declared his intention of pleading guilty to the indictment, as a small reparation to society. However, when he was arraigned at the Bar he pleaded "Not Guilty," and was acquitted. The chaplain asked why he had professed so much and done so little, and the rogue said, "Well, your reverence, I did intend to plead guilty, and take my punishment, and mend my ways, but, Lor' bless you, I never guessed that it was to be the Lord Chief Baron. As soon as I clapped my eyes on the dear old boy I knowed I had a good chance, and so I up and said 'Not guilty, my lord,' and I knowed by his look he meant to get me off. If they was all like him it would be better times for us."

I was also present when Mr Newton, the late police magistrate, appeared as counsel to prosecute half-a-dozen men for manslaughter. There had been a public-house quarrel, and two men had got up a fight. An unlucky and fatal blow had been struck,

so the police arrested the whole party. As soon as Mr Newton had opened the case for the Crown, the Lord Chief Baron said, "What case is there against these five men?" "I submit, my Lord," said the learned counsel, "that they were aiding and abetting." "No," said his lordship, "they were there to see fair play," and he directed the jury to find the five men "Not Guilty." The sixth man who struck the blow was found guilty and sentenced to one month's imprisonment. Sir Frederick believed in the old English theory of settling a dispute with the fist. Indeed it is recorded of him that catching a poacher fishing in his river, and justly incensed at words of abuse from the trespasser, the Chief Baron whipped off his coat and went for the man in style. Some few years later I used to go to his country house at Hatton, where there was hearty welcome and unbounded hospitality. The Whigs wanted him to resign his office so that they might find a seat on the Bench for their Attorney-General. The Chief Baron said, "I know I am not the man I once was, but I am a good deal better than old Atherton." And so he was. When the

Tories came in he did resign, and they put up Sir Fitzroy Kelly, who was then much too old for such an office. But what he lacked in vigour he made up for with the courage of expectation. Once at a judge's dinner at Croydon I told him that I had seen him more than forty years before walking in procession at the head of the Tories as the new Member for Cambridge. "Yes," said he, "and let us hope that forty years hence we may again meet under equally auspicious circumstances." In the prime of life Sir Fitzroy Kelly was noted for his rapid grasp of facts, but in his old age it was impossible to make him understand a case unless the facts were stated very slowly and in strict chronological order, with dates attached like tags to parcels. Mr Tom Jones, who was a noted wag, played a wicked trick on the old judge. He gave forth a long story with dates innumerable, and then with an air of innocence said, "Has your lordship got all these dates down?" "Yes, Mr Jones, I have," said the judge. "Then I may tell your lordship that none of them have any bearing whatever on the case." Although Sir Fitzroy could not in his old age appre-

hend the facts of a case, his law was absolutely right, and there is not on record, so far as I remember, a single case in which his judicial opinion on a point of law has been reversed.

My desire to be at the Bar was perhaps stimulated in very early days by my father taking me over to the County Quarter Sessions, where he frequently acted as foreman of the Grand Jury, and also to the Board of Guardians at Chesterton, of which he was chairman for sixteen years. Not only have I been in the Grand Jury box when the jurors were sworn in, but I have, in defiance of the law, actually been in the room when they were considering the bills sent up to them, and at the Board of Guardians I have sat by the side of the clerk and written down in the official book the relief ordered. I certainly was not ten years old at that time, and how such things were allowed I cannot now imagine. On our return journey from Quarter Sessions my father explained to me what had been done, and how after the Grand Jury had found about a dozen true bills, one of the persons suggested that they should throw out a bill.

"But," said the foreman, "the evidence is very clear against the man." "Yes, I know," replied the person, "but if we do not throw out a bill now and then Mr Eliot Yorke, the chairman, and Mr Pemberton, the Clerk of the Peace, will think that we are a pack of fools, and not taking any trouble about our business."

It is yet more strange that my father, when he was twelve years of age, should have been taken by his schoolmaster, with all the other boys belonging to the school, from St Ives to Cambridge Castle to see Daniel Dawson hanged for poisoning of race-horses at Newmarket after a trial before Mr Justice Vaughan. The master of the school went to the expense and trouble of the journey in order to demonstrate to his scholars the result of a wicked life. We have got rid of public executions, but if they still existed, I should like to hear of some schoolmaster following the example of the pedagogue of St Ives, because it would be so delightful to read a leading article in the *Daily Telegraph* on the subject. Of course in those days it was common enough to inculcate moral precepts by awful examples of the conse-

quences to those who disregarded them. But even this barbarous method of education was not quite so bad as that of the French patriots during the Revolution. As a child I attended at Cambridge a dancing-class held by Monsieur Venud. He was at school in Paris in 1793, and on 16th October of that year the boys at the school had a whole holiday, and were placed so as to see the Queen Marie Antoinette drawn to her execution. This, however, could hardly have been intended as a lesson to avoid wicked acts, but was for the purpose of impressing on the young the glories of liberty and fraternity.

At the school at St Ives there was a suspicion that one of the pupils had committed a theft, and the same master resolved to bring home the crime to the thief. All the boys were placed in a row in the schoolroom, and then a servant brought in a cock. The master ordered each boy in turn to stroke the bird, telling them that when the thief touched the cock the bird would crow as surely as he did at the fall of Peter. This dreadful ordeal the boys went through, each fearing that the wretch might crow; and

when the last boy had passed, the master ordered all the boys to hold up their hands, when lo and behold! only one boy had clean hands, all the others being dirty from the stuff with which the back and neck of chanticleer had been smeared.

Professor Vambery in his recent autobiography says that while he was the guest of a pasha at Teheran, about thirty years ago, a valuable diamond ring was lost, and the pasha, suspecting his servants, sent for a famous sheikh, who seems to have been on a level with a third-class Scotland Yard detective. This is the professor's description of the scene. "The sheikh sitting cross-legged produced from under his mantle a black cock, and holding it in his lap he invited all the servants, each in turn, to come up to him, stroke the cock softly, and straightway put his hand in his pocket; then, said the sheikh, the cock without any more ado will declare who is the thief by crowing. When all the servants had passed in turn before the sheikh and touched the cock, he told them all to hold out their hands. All hands were black with the exception of one which had remained white, and whose owner

was at once designated as the thief. The cock had been blackened over with coal dust, and as the thief, fearing detection, had avoided touching him, his hand had remained white, and consequently his guilt was declared."

It is a far cry from Huntingdonshire to Persia, and the sheikh could hardly have heard of the schoolmaster of St Ives, but each was unconscious of the infirmity of the test, neither understanding that the clean hand was likely to be as much the result of cowardice as of guilt.

There was, however, another side to the picture, for jurors drawn from Cottenham, the big village famous for incendiary fires, cheeses, and steeple-chases, would never find a verdict of "Guilty" if they could help it. Squire Martin had spent a weary week at the Shire Hall at Cambridge sitting as chairman at Quarter Sessions. The acquittals by the jurors from Cottenham had been numerous and outrageous. On his journey home to Quy Hall the old squire saw a hare being chased by three greyhounds. "Run, poor hare," exclaimed the squire, "nothing can save you but a Cottenham jury!" In

those days the defences put forward by the late Mr Thomas Hack Naylor, both at assizes and sessions, were fine specimens of the ancient art, which has been ruined by the law enabling the prisoner to give evidence. Even in his declining years he was very successful with the county jurors. I once heard him cross-examine an unhappy witness for twenty minutes on a subject which had no relevance whatever to the case. The witness was wearing a waistcoat of many colours, and Mr Naylor worried him with questions where he got it, what he gave for it, and how long he had had it, and so forth, that the witness became bewildered, and contradicted himself over and over again. Then Mr Naylor appealed to the jury whether they could safely convict the prisoner on the evidence of a man who could not reasonably account for the possession of a waistcoat which he was wearing in the witness box; and thereupon the jury found a verdict of "Not Guilty."

However, these Cambridgeshire juries might be forgiven, for the county has been of late years, and is, singularly free from crime. In my early days we had fifteen incendiary fires

in one year in the village, and Cottenham was twice destroyed by fire. No one was prosecuted for these crimes, and the offence of arson died out, when the discovery of gold in Australia tempted the most desperate of our neighbours to leave us for their own and our good. The most respectable place in the county was Newmarket, and the calendar at the assizes seldom contained any serious charge from that town or the villages near it. Jurors in the country are much more prone to acquit, when crime is rare and not of a heinous character. It is otherwise when there is an epidemic of burglaries or highway robberies with violence, in which cases jurors are naturally impelled to do their utmost to put down dangerous violations of the law.

My inclination to study the law was to some extent encouraged by hearing so much in my early days about Lord Brougham and his advocacy of Reform, about Lord Truro whom my father knew as Serjeant Wilde, and about the trial of Queen Caroline for whom evidence was collected by a near relative, and by stories about James Wood of Bristol, and about Alderman Wood whom my father

also knew. So after I had taken my degree, being a fellow of King's College in its opulent days, I was able to follow my own desires, and these led me to exchange the luxurious life of the College for the dreary, dismal existence which London provides for strangers within her gates. One piece of good fortune fell to me by the merest chance. Because one of our fellows was a member of Lincoln's Inn I entered that honourable society, and I can never express what I owe to that lucky chance.

In my student days it was not necessary to pass an examination before being called to the Bar. The alternative was a certificate that the student had been in a barrister's or a pleader's chambers for one year at the least. There is nothing so perilous as to dogmatise about education general or special, but so far as the Bar is concerned I regard the examination as not only useless but highly pernicious. It may be very desirable that a candidate for Holy Orders or a student of medicine should be required to pass an examination before being admitted to the ranks of the clergy or of the medical profession, but a barrister undergoes a

public examination in every case in which he holds a brief from the beginning of his career to the end. He may have achieved the highest honours in the examination and yet fail as counsel in every case in which he is retained. He may just manage to scrape through the examination and yet prove himself a great advocate or a learned lawyer in court. The judges know who is worthy of their attention, the solicitors know to whom it is wise to deliver briefs, because counsel are "intellectual gladiators" and are day by day exposed to criticism. That is why I say that the examination is useless. But go further and say that it is pernicious, because every student feels that he must at all hazards pass it, and he spends the time, that will never come again, not in learning his business, but in equipping himself for the paper struggle in which he must avoid failure. Cramming is substituted for a well-ordered course of reading, and lectures, which are in themselves important aids to legal education, are apt to be attended rather with a view to the examination than to sound learning. But the paramount evil of the ordeal of examination is

that it discourages what I may call the principle of "apprenticeship." The three years' preparation for the Bar ought to be spent in the chambers of counsel. Resort should be had both to Lincoln's Inn and the Temple, whether the student proposes to practise in Equity or in Common Law, if he wishes that his knowledge of law should be built on a solid foundation. There is no greater fallacy than to suppose that the law can be picked up in the course of practice piece-meal. Besides the knowledge to be gleaned in the chambers of counsel, there is the not less important matter of the traditions of the Bar. From ignorance thereof young counsel find themselves placed in embarrassing positions in their practice, not from any wrong intent, but because of their want of experience. Of no career can it be more truly said,

> "Sunt certi denique fines,
> Quos ultra citraque requit consistere rectum."

For these reasons I would restore the alternative of "apprenticeship," with safeguards against any abuse of it, for while it would be going too far to shut out men who

could not afford the fees for reading in chambers, yet the latter qualification should be preferred. I speak of course with hesitation as to the education of solicitors, but I have been assured by a solicitor of great ability and great experience that the examinations are equally pernicious in that branch. "Here," said he, "is my son, a clever man, who has read well for all his examinations and passed with much credit. Now he will be admitted a solicitor, and will have to devote three years to learning his business, of which he is quite ignorant. Our business can only be learned as an apprentice learns his handicraft, by being shown how things are done, and by seeing others do them; you cannot learn from books and lectures. The experience I have gained leads me to the conclusion that the present high standard of requirements for the final examination, coupled with the almost irresistible inducement to purely theoretical studies in the pursuit of distinctions and prizes, is inimical to the efficient training of a clerk for the solicitor's branch of the profession. An articled clerk serves four or five years, according as he has or has not

passed the London Matriculation, or some other examination, under which his term of service is reducible to four years, or three years if a University graduate, and five years' service is all too little in which to gain a practical acquaintance with the routine and methods of a solictor's practice and that knowledge of business without which a solicitor is helpless and unfitted to give that practical advice to clients which in all cases is required of him, and those five years must be not partially but wholly devoted to the task if any useful results are to be expected. No one appreciates more than I do the utility of book learning, but it is valueless without the practical experience of business, to be gained only in the actual work of a solicitor's office. Moreover, apart from such practical use, it quickly fades away into mere blurred reminiscences. In the present state of things, according to my experience, it is impossible for the principal, particularly having regard to the suspicion of personal interests, to control the natural and legitimate ambition of his pupils to go up for the distinctions and prizes. The result is that just as the pupil is beginning to get an acquaintance with office routine, and to take

impressions of practical affairs, he is switched off on to a painful and elaborate study at Stephen, in order to get into the first division of the 'Intermediate.' After his examination he needs some rest, and slowly he comes back to the practical concerns of life and takes his place in the office. Scarcely has he begun to realise the problems of every-day life than he is again absorbed in book learning, classes and lectures; and for six or nine months before the final examination he is withdrawn entirely from the business and has to devote his whole days and nights to study. The result is, that of the four or five years he has not given two to continuous application to practical affairs, and he faces his task of commencing practice on his own account equipped only with a load of case law, and has nothing like sufficient experience to give him confidence in dealing with the business affairs of his client." I venture to think that these are words of wisdom.

Soon after I had entered as a student at the Inn I became a pupil in the chambers of the late Mr T. S. Badger, editor of *Jarman on Wills*, and lecturer on the Law of Real Property. His business was conveyancing,

and at the end of a month it became clear to me that there was not much to be said in favour of that kind of work. The labour was very great and very monotonous, and the labourer, although beyond all cavil worthy of his hire, got very poor wages. Mr Badger, who assumed the name of Eastwood while I was with him, was most industrious and careful, but he was not a very clever man. We pupils were often checkmated by a problem, and when we found that our master could not solve it, we adopted a simple device. We went off to lunch in the room at Lincoln's Inn below the hall and sat down opposite George Jessel, who was then doing a fine business at the Junior Bar. We at once began to talk about the point which had baffled us. Jessel instantly pricked up his ears, and in less than five minutes we had the problem solved, with full information as to all the cases and references to the reports in which they were to be found. That very learned lawyer, who presided as Master of the Rolls in the Court of Appeal with so much distinction, never imagined that we sat down opposite to him for the express purpose of "drawing" him. He was an "enthusiast"

about law, and could not restrain himself when the temptation to discuss a point was held out to him. Having spent about a year over abstracts of titles, requisitions, conveyances and wills, I deserted Lincoln's Inn and went to the chambers of the late Mr Thomas Chitty, the pleader. His practice in pleading, summonses at chambers and advising was in quantity about equal to that now done by a dozen junior barristers. I stopped in London one whole Long Vacation while Mr Chitty was at Buxton, and within the space of nine weeks no less than forty-five cases came in for "opinions." The chambers in the preceding Long Vacation had been under the care of the late Mr Charles Lanyon, who was a pupil there with Lord Rowton, Mr Justice Grantham, Sir William Marriott and myself. Charles Lanyon knew very little law, but he made up for his legal weakness by strong self-confidence. He was always ready to give his opinion on any point of law. He never hesitated and never suggested a doubt. In the early part of that Long Vacation a solicitor visited the chambers with a big indenture of lease in his hand containing this clause—

"Provided always, and it is hereby agreed and declared between the said parties to these presents that if the said yearly rent or sum of £100 hereinbefore reserved or any part thereof shall be behind or unpaid in part or in whole by the space of twenty-one days next over or after any of the days of payment whereon the same ought to be paid as aforesaid contrary to the true intent and meaning of these presents although no formal demand shall have been made thereof . . . it shall and may be lawful to and for the said lessor or his assigns into and upon the said messuage or tenement and premises hereby demised or into or upon any part thereof in the name of the whole to re-enter and the same to have again retain repossess and enjoy as in their former estate and the said lessee his executors administrators or assigns to expel put out and amove without any legal process whatever and as effectually as any Sheriff might do in case the said lessor or his assigns had obtained judgment in ejectment for the recovery of the possession thereof, and a writ of *habere facias possessionom* or other process had issued on such judgment directed to such Sheriff in due form of law,

and that in case of such entry and of any action being brought or proceedings taken for the same by any person whomsoever the said lessor or assigns may plead leave and licence in bar thereof, and these presents may be used as conclusive evidence of the leave and licence of the lessee his executors administrators or assigns to the lessor or assigns and all persons acting therein by their order for the entry or trespasses or other matters complained of in such action or other proceedings." "Now," said the solicitor, "a quarter's rent has been in arrear for thirty days, and the tenant defies me, his landlord, and everyone else. I want to know if the landlord can enter the house and put the man out." Lanyon read the clause and said, "It is quite a plain case. Tell your client to get some men and eject the fellow." Seven days afterwards the solicitor again appeared, but with a troubled countenance. "Oh, sir," said he, "my client and five men are to appear this afternoon before the magistrate at Clerkenwell upon a summons for doing what you advised me should be done." This piece of intelligence would have struck terror into the soul of any ordinary

barrister, but Lanyon was not in the least degree perturbed. "This magistrate," said the learned counsel, "does not know his business. I will go at once and put him right." So a cab was called, and away went counsel and solicitor at full speed to the court. The case was called on, and up rose Lanyon and explained to the justice how wrong it was to bring these six men before the Court, and gravely read out the clause in the lease. The magistrate waited quietly until the learned counsel had finished his address and then said, "Now I will read out something else. 'The King defendeth that none from henceforth make any entry into any lands and tenements but in case where entry is given by the law; and in such case not with strong hand nor with multitude of people but only with peaceable and easy manner, and if any man from henceforth do to the contrary and thereof be duly convicted, he shall be punished by imprisonment of his body and thereof ransomed at the King's will.' That is the statute passed in the fifth year of the reign of King Richard the Second, and it is therefore older than your lease. So I

shall commit these six men for trial at the sessions." The story ran like lightning through the Temple, and Lanyon woke up to find himself famous, and as notoriety is better than obscurity, solicitors became familiar with his name and briefs began to roll in. Many years afterwards I was counsel for the mortgagees in possession of a ship, who were defendants in an action for detention of a boiler. The plaintiff had let to the owner of the ship the boiler on hire, and I had contended that the defendants were under no obligation to get the boiler out of the ship and put it on the quay, so that it might be restored to its true owner. The late Sir Archibald Smith was the judge, and he said to me: "What do you say that the plaintiff ought to have done?" I replied, "He could have come on board and unscrewed his boiler and taken it away." I daresay," said the judge, "you wanted him to play Charley Lanyon's game." Whereupon the judge and I had a hearty laugh, which became more hearty when we discovered that no one else in the court knew what was meant, and everyone marvelled at our merriment. Lanyon never looked

back, but went on year after year winning more clients and more briefs, and being a sharp, clever man he ultimately learned a fair amount of law, more or less at the expense of his clients. Many a quiet laugh have I had watching him, as he with an air of infallibility laid down the law to silent groups of admiring solicitors and clients, unembarrassed as he was by recollection of awkward cases and harassed by no doubts. Lanyon was a merry, light-hearted soul, and we all deplored his death in the prime of life, but I have never known so marvellous an example of appearances being better than realities.

Lord Rowton, then Montague Corry, was a most industrious man, and acquired a very considerable knowledge of law and business while he was a pupil in chambers, and there can be no doubt that, if he had practised as a barrister he would have risen to a high position in the law. The nobility of his nature and the charm of his manner fitted him admirably for the career which he marked out for himself.

We used to tell in confidential moments wonderful things about the business in our

chambers, how by skilful pleading this plaintiff had been thrown over the assizes and that plaintiff over the Long Vacation, how we had drawn unconsciously the pleadings on both sides and only found out the blunder when we were asked to advise on evidence on both sides. In those days three judges attended at chambers, one from each of the Courts of Common Law, and we used to go over to Serjeants' Inn to find out who was sitting, because we got to know, under the instructions of our master, which judge was likely to make the orders we wanted. Counsel had to wait in a room about ten feet square, and there was no list of summonses. The clerk used to come out to see who were waiting, and precedence was generally accorded to Mr Chitty, and next to him came favoured mortals, the tradition being that the clerk would ask, "Is there any judge's son with a summons?" I never saw Mr Chitty seated at his chambers. He stood up all day long at a high desk with slippers on his feet, and after he had attained the age of three-score years and ten he was ready to march any distance with the Inns of Court Regiment. He had a clerk who

was manifestly deaf and apparently dumb, but with the reputation of being one of the very best in the Temple. I think I see Mr Chitty now rushing out of his slippers and into his boots, and grasping a select bundle of summonses on hearing from me that Baron Martin had arrived at Serjeants' Inn.

My next master was the late James Hannen (Lord Hannen), a very great lawyer. Lord Herschell, Lord Bowen, Sir Archibald Smith, Sir Matthew White Ridley, Sir Charles Hall and Edward Stanhope, Secretary of State for War, were at various dates his pupils. The business was enormous, and the chambers were crammed week after week with cases about charterparties, bills of lading, marine insurance, bills of exchange and mercantile contracts of every variety. The difficulty was to get the pleadings and opinions done, because Hannen was every day and all day in court or at consultations, and he never liked night work. However, the pupils did their best, and on Saturday our drafts were taken to his house to reappear on Monday morning revised and amended. My principal occupation on Monday afternoon and Tuesday was to

interpret Hannen's handwriting, which fairly baffled the solicitor's clerks. However, the handwriting of Dr Goodford at Eton, of Mr Badger, and Mr Chitty were quite as cryptic as Hannen's. I never saw Hannen look at an authority but once, and that was when Governor Eyre was up before the magistrate at Bow Street in reference to the death of Gordon during the Jamaica Riots. Hannen was Junior Counsel to the Treasury and had to appear for the defence. I found him on his knees with Coke upon Littleton before him, and shouted with joy to find that a case had come in which required research. The joke of the thing was that he found a splendid passage in that mine of learning, and when he exhibited it at Bow Street the magistrate was fairly amazed, as well he might be. No one but Hannen would have thought of looking into Coke upon Littleton in order to find a justification for hanging a man not a soldier by the sentence of a sort of court-martial. We all congratulated him, and prophesied a brilliant career for him at the Central Criminal Court, where we declared that he would speedily oust from pride of place Mr Hawkins, Mr Ballantine, Mr

Hardinge Giffard and Mr Poland. Hannen was in those days an ardent Radical, but before he had done with the defence of Governor Eyre he had persuaded himself that force was the best remedy. Not long afterwards he was made a Judge of the Court of Queen's Bench, and when he walked out of his room at 11 King's Bench Walk, A. L. Smith walked in and captured nearly every one of Hannen's clients, thereby at one blow commanding a splendid practice. Such a chance as this falls to few men, but there are also but few who could turn such a chance to such good account. In addition to a thorough knowledge of law, A. L. Smith possessed sound sense, rapidity of perception, and a terse epigrammatical power of expression beyond anyone I have ever known. The result was the choice of him as Junior Counsel to the Treasury, followed by promotion to the Bench, and ultimately to the position of Master of the Rolls.

CHAPTER II

IN COURT

On being called to the Bar I first joined the old Norfolk Circuit. The leaders were Mr O'Malley and Mr D. D. Keane. Why these two Irishmen favoured the East of England with their patronage I do not know, but they certainly brought with them manners such as would not now be tolerated either by the Bench or the Bar. Mr Keane had a monstrous infirmity of temper, and apparently he made no effort to control it. Mr O'Malley knew exactly how to plunge his adversary into a paroxysm of anger whenever he chose. The result was a quarrel which vexed the judge, distracted the jury, and created a scandal to justice. These scenes are recalled by way of contrast to the relations which now exist between members of the Bar. The excitement of forensic contest must at times give rise to a certain degree of heat, and the warm blood of youth

is apt to betray itself in altercation. But no one who has seen three decades of the law can fail to observe enormous improvement in the demeanour of counsel towards each other. Moreover, there is a remarkable absence of anything like malice or uncharitableness out of court. Indeed the profession, which is by no means the bed of roses which the public fondly imagine, has this to its advantage, that the friendships formed among its members are very numerous and very real. Side by side with the change in manners of counsel, one to another, there has also been an advance in courtesy towards the suitors and witnesses. There must be occasions on which it is necessary to press witnesses into admissions against themselves, and even to recall their past history, but this is now done with the desire to inflict as little pain as possible. No one wishes to arrogate to the Bar any special credit for these reforms. They are only part of the general tendency in the minds of the people at large towards pity for rather than condemnation of wrong-doers. Indeed it is now a somewhat risky business to cross-examine a witness as to his past career with a view to his discredit, for

the foreman of the jury will stand up and say, "My lord, has this anything to do with the case?" And then the counsel begins to think that the verdict is slipping away from his side. Neither the jury nor the public has the least idea how often the brief of counsel contains a mass of information about the suitors and the witnesses with the intention that this shall be used in cross-examination to their discredit, and how often the information is not used in spite of the pressure put upon counsel by the client. I am told that not many years ago the Irish Bar was distinguished for its terrible ferocity in attack upon the witnesses both in cross-examinations and speeches, but that there has been the same change there as here in recent years.

I know nothing so embarrassing to counsel as an instruction to ask questions derogatory to character. Suppose counsel has in his brief a sad record of the party to the suit against whom he is retained, or of the principal witness. It by no means follows that it is just to use it. You have to ask yourself many searching questions. Is the matter at issue so serious as to demand

exposure with all its pain to the victim? Does the record really impeach the veracity of the person, as distinct from his morality? Will justice be hindered or advanced by the question? Although the client may rub his hands with delight at the discomfiture of his foe, it is no part of the office of counsel to lend himself to that kind of warfare. The only justification for an interrogatory as to the past history of a witness is, that the answer must tend directly to show that he is not at all likely to tell the truth. Apart from these considerations of what is just there is the policy of the thing. Will it shock the jury and enlist their sympathy for, rather than their distrust of the witness? And if the witness is a woman who can put on a pathetic air and pour forth a flood of tears at the right moment, the humanity of the jury is apt to revolt at the treatment. On the other hand, if no such questions are asked, the counsel on the other side demands of the jury that his client shall be believed, because nothing has been asked tending in any way to prejudice his or her reputation. The *Daily Telegraph* has written that counsel as such has a duty to ask questions which

must make him shiver as a gentleman. There is not and cannot be any such duty. Counsel sometimes, either from want of experience or in the heat of the moment, insert between their questions observations which ought not to be made, and if such observations are "smart," they elicit a murmur of approbation. But of course they ought not to be made. Here is an illustration of the impropriety of this practice. Counsel, "What was your business at that time?" Witness, "I was a financial agent." Counsel, "Do you mean that you were a money-lender?" Witness, "Yes." Counsel, "I understand that you are no longer in business." Witness, "No." Counsel, "I am glad to hear it." Witness, "If our positions were reversed, I should try to treat you as a gentleman." The judge is to some extent to blame for this sort of impropriety, for it must be his function to check and reprove those who go wrong. Moreover, cross-examination ought to consist of questions and answers, not of rhetorical invective with a note of interrogation at the end of the sentence, or of offensive comments on the answers of the witnesses. But although it

is wrong to show discourtesy to a witness, it is not necessary to go as far as the late Mr Searle once did in the opposite direction. I met Lord Hannen one day in the street and he stopped me, because he had, as he put it, a story which he was sure would please me. "You know," said he, "what a good fellow Searle is and how much we all respect him, but he is not what you would call a powerful cross-examiner. This morning in my court I tried a very doubtful will case, and the only witness in support of the will was a solicitor who had been struck off the Rolls. Searle was there to upset the will, and had to cross-examine the witness, and it was quite obvious that he had full instructions as to the history of the witness. So after the evidence-in-chief had been given he got up and said, 'I think, sir, you were at one time a solicitor.' 'Yes,' replied the witness. 'And you are not a solicitor now.' 'No' said the witness, and down sat Searle, and the jury thought, 'Here is a man who has retired with age and honour from his profession, and is probably now a Justice of the Peace, and so there can be no doubt at all about the verdict.'"

It is by no means difficult for a witness to turn the tables on counsel. My friend the late Mr George Williams did not like giving evidence in horse cases, and he was rather too candid a man for the work. But of course there were occasions on which, as the busiest man in his profession, he could not help himself. He was called to prove that a horse was a "roarer." Serjeant Ballantine was on the other side, and in his best Mephistophelian manner he said to the witness, "If you say that my client's horse was a roarer, just represent to the jury the sort of noise he made." "No," said Mr Williams, "you see that is not my business. Now if you will be the horse and make the noise I, as veterinary surgeon, will determine whether you are a roarer or not." This concluded the cross-examination.

One of the most amusing controversies I ever heard in court was in an action brought by a tradesman against a husband to recover the price of goods sold to the wife. The plaintiff called the wife as a witness against her husband, and in the course of her evidence she said, "My husband must be out of his mind to suppose that I can dress

myself and pay my charities on an allowance of £1500 a year." This seemed plausible enough until the other side was heard. But then the husband gave his evidence and he said, "My father was a rich man. He had £60,000 a year, and my poor mother never had more than £800 a year pin money. Now I am a very poor man. I have only £30,000 a year, and I think that £1500 a year is quite as much as I can afford for my wife's dress and pocket money." The jury was of the modern special jury type, and their faces at a man with a million sterling describing himself as a pauper were a study.

In the good old days a learned counsel of ferocious mien and loud voice, practising before Mr Justice Maule, received a magnificent rebuke from that famous judge. No reply could be got from an elderly lady in the box, and the counsel appealed to the learned judge. "I really cannot answer," said the trembling lady. "Why not, ma'am?" asked the judge. "Because, my lord, he frightens me so." "So he does me, ma'am," said the judge.

I was once counsel in an action tried before the late Lord Justice Cotton at Maidstone

Assizes. There was nothing whatever in the case to alarm anyone, the whole affair being of a very common-place kind. But the plaintiff could not be induced to utter a word. We all tried our hands at him, including the learned judge who, as will be remembered, was the gentlest of men, but it was absolutely in vain. The judge seemed to think that the man would not speak because his case was untrue, but there were really no facts in it which were capable of dispute. At last the gentlemen of the jury relieved the situation, for they rose as one man and declared they would have no more of the case as it was a mere waste of time. The joke of the thing was that the plaintiff had a perfectly clear case, but that he was entitled in law to a verdict of one shilling only. So no harm was done. But I never saw or heard of a like case.

Business men, in spite of the frock coats and sober neckties which they invariably assume out of respect for the Court, and in assertion of their own respectability, are very seldom good witnesses. Nearly all money-makers are stupid. If anyone denies this proposition, let him recall the dinners at

which he has been present with successful seekers after wealth, and the utter dreariness of those functions. The reason is that money is made by concentration of the faculties on that one pursuit. But although these people are stupid, they are not at all conscious of their deficiency. They regard cross-examination as a duel, in which they are to pit their brains against those of counsel. They are therefore on the alert to guess at the drift of the questions, and to make their answers fit in with what they suppose to be the theory of their case, with the result that at the end of half an hour they are in a hopeless tangle. It never occurs to them that if their case will not admit of the truth being told it must be a bad one.

That is a blunder into which women very rarely fall. Now and then in her own case a woman will commit the grossest perjury, but when she is called as a witness she far surpasses man in the perspicuity of her narrative and in the honesty of her replies. No counsel who has any pretence to tact ever tries to get the better of a plain country woman giving evidence at the assizes. There is just a chance of eliciting some favourable

answer if you treat her with profound respect, call her "madam," and soften your voice, but even these artifices will not induce her to swerve from what she has made up her mind is the real truth of the case.

I was counsel in an action involving a large sum of money with the late Sir Archibald Smith as the judge and Sir Robert Finlay as my opponent. My client was a solicitor, and the hearing began in the afternoon. He was cross-examined for about half an hour before the Court rose, and the case got weaker with every answer which he gave. When the adjournment came I said to him, "If you do not promise me that to-morrow you will tell the whole truth, without the least regard to the effect of your answers, you will have to get someone else to go on with your case, for I will not." He was cross-examined the next day for two or three hours, and he did his utmost to answer honestly and fully. When the judge gave judgment he said, "I believe all that the plaintiff has said. At least I mean that I believe all that he has said to-day, for I did not believe one word of what he said yesterday." My client went out of the court

richer by a large sum of money than when he came in, and his success was entirely attributable to his resolution to give honest, not calculated replies to what was asked. There are cases, however, in which duplicity may serve the case of the suitor. Mr Justice Bucknill and I were counsel for a man who was sued for £5000 damages for the loss of a cargo of explosives laden on a barge which sunk at her moorings in the estuary of the Thames. We regarded the case as hopeless, because we thought that the owner of the explosives, having paid a high price for the hire of a floating warehouse, might reasonably expect it to be seaworthy. So we did our best to persuade our man to pay up, if he could get off with seventy-five per cent. of the claim. He said, "I have got just £4000 in the world, and if I do as you advise I shall have to take myself, my wife, and children into the workhouse of the town of which I was last year mayor." That settled us, and we worked like shipwrecked mariners at the pumps, and got into port with a verdict for the defendant, and what is more, we held that verdict in the Court of Appeal. Two years afterwards the man died,

and his personality was sworn at £20,000. But I shall always believe that his pardonable deceit got him that verdict.

I can speak of the honesty in court of costermongers from experience. In two cases tried before the late Lord Chief Justice the evidence given by a large number of these useful traders was so scrupulously fair that I ventured to utter a word of praise, and Lord Russell said to the jury, "I sit here and listen to the testimony of persons of all classes, and I think that what we have heard from these men stands out in relief as compared with what we often hear from persons in a much higher position in society."

Sailors in collision cases have earned a very different character. The late Mr Pritchard was marshalling the evidence to be adduced on behalf of his ship, and worried the witnesses in a vain effort to reconcile their statements, until at last the captain said, "It is of no use to bother any more about it. Just you write down what I and the mate and the crew are to swear to and I will see that it is done." This was too much even for the nerves of an Admiralty solicitor of forty years' experience.

Lord Hannen once held forth to me on the sad lack of truth among his nautical witnesses. He had spent his life as counsel in the old Courts of Common Law, but, because he was the greatest common lawyer on the Bench, the Prime Minister or the Lord Chancellor took him away from the work he knew and set him down to divorce, probate and Admiralty business, of which he knew nothing at all, and an important part of which he loathed. There is no objection to this sort of absurdity in politics, because in the Cabinet it is most desirable to have respectable mediocrity if you can get it; but it is quite another matter where the law, which is far more difficult and more noble than statecraft, is concerned. Moreover, at the time when Lord Hannen was so transferred, and at more recent dates, the late Mr Inderwick was practising in that division, and besides being a man of high intellectual attainments, great learning, and tranquil disposition, he knew more than any living person about the business of the court, yet he was passed over. While Lord Hannen admitted that in the Common Law Courts he had to deal with strange evidence in road

collision cases, he maintained that drivers and their passengers were not really as bad as sailors. I offered him an explanation which I venture to think is the true one. The sailor is loyal to his flag. He has signed articles for a voyage on a ship. He gets board and lodging and wages from the owner. His captain is his superior officer, whom he has to obey and to help in storm and stress. In a damage suit the purse of the owner and the character of the captain are put in jeopardy. His plain duty is to save both, and he thinks that duty is just as binding on him in a court of law as in a tempest. So a strain on his conscience is no more to him than it was to the Highlander of 1745, swearing to an *alibi* to save from the halter the chief of his clan, who had "gone out" in the cause of the young Pretender.

There is one difficulty under which we all labour, judges, counsel and jurymen alike, and that is in hearing what the witnesses say. All the courts in the Strand building are constructed on a wrong principle. Court of Appeal No. 1 is the worst and that of the Lord Chief Justice is the best for hearing.

The Assize Court at Lewes is the proper model, although there the Bench is rather too high. Queen's Hall, Langham Place, is also admirable for its acoustic properties. But what is worse than the structure is the method of the witnesses. It must be remembered that at least half the persons who come to give evidence have been taught in Board Schools, and they constitute an awful object lesson of Board School inefficiency. I do not know whether the art of saying what you have to say distinctly and audibly is taught at all in our elementary schools, but if it is, the results are disgraceful. The judge says, "You really must speak up. What does he say?" The counsel intervenes, "The jury have to hear your evidence. Look across to them and speak more clearly." The jury, after straining their ears in vain, give the witness up as a bad job, and wisely conclude that if he will only mutter his evidence is worthless. The power of the voice is generally right enough, but the enunciation is to blame, and that is a thing that might and ought to be educated. One of the most ludicrous results of this mumbling sort of testimony occurred in a case tried

before the late Mr Justice Manisty. In the middle of the second day the last witness for the defendant, a gentleman of clear utterance, was in the box, and in the course of his evidence he said, "The near wheel of the omnibus then struck the side of the tramcar." "What did you say?" said the learned judge; "this is the first I have heard of any tramcar." "My lord," said the late Mr Henry Winch, "we are trying a collision between an omnibus and a tramcar." "Oh dear, oh dear," exclaimed the learned judge, "I thought it was a collision between an omnibus and a sand cart; now I shall have to alter all my notes." Eton School may be open to criticism, but when I was there they did teach us to open our mouths and speak in a manner to be understood by all people.

Of course if all our judges and counsel had the hearing power of Chief Justice Jervis, whispering witnesses would do as well as people of distinct utterance. That famous judge was trying a case in the course of which a witness gave some evidence apparently fatal to the other side, and no witness was called to contradict the assertion. When

the judge came to sum up he said, "I happen to have very acute hearing, and when the witness gave this evidence I distinctly heard the leading counsel on the other side whisper to his junior, 'Tell our attorney to go out of court and ask Mr C. if he can contradict this.' Then I observed that the junior counsel, rather more cautious than his leader, wrote the question down on a piece of paper and passed it to the attorney, who thereupon went out of court, but did not bring Mr C. back with him. I suppose that Mr Merewether knew by experience the extraordinary power of hearing with which I am endowed, and that is why he was careful to communicate with the attorney in writing."

Many of my young friends who have just been called to the Bar, and who have no connection among solicitors, and do not know any land surveyors, or even a chairman of a railway, gas or water company, ask me how they can possibly expect to get a start. Of course I have to repeat the oft-told tale of Lord Russell of Killowen, Lord Herschell, and the late Speaker of the House of Commons dining together at Liverpool Assizes; how these three men, who rose to

such eminence, almost despaired of the Bar, and talked of trying their fortune in other ways, and how my dear and lamented friend, the late Lord Chief Justice, used to adorn the tale and point its moral, and how he could explain that one not here to be named was called on the same day that he was, and at once entered upon a lucrative practice, but later on faded into obscurity. I knew Lord Herschell at the Junior Bar, when his practice was of a meagre description. His success came with a rush immediately on his promotion to the "Inner Bar" and his election to Parliament for Durham. All men admit that Viscount Selby has never been surpassed as "Speaker."

Lord Cairns and Lord Selborne were the two best counsel at the Equity Bar of their own and probably of any time. Mr Palmer had city relatives and friends of wealth and influence just as Mr Page Wood (Lord Hatherley) had in his day, but Mr Cairns came from Ireland to London an unknown man. His start at the Bar was in this wise. He called on Mr William Bevan, whose name has already been mentioned as the solicitor who defended Tarvell, with a letter of intro-

duction in order to instruct Mr Bevan to obtain probate of a will of which Mr Cairns was executor. Some weeks afterwards Mr Bevan delivered to Mr Cairns a brief in a suit in chancery, the other parties to which were represented by Messrs Gregory and Rowcliffe. After Mr Cairns had delivered his argument the representative of the latter firm asked Mr Bevan the name of his counsel, and thereafter briefs came in a regular stream from No. 1 Bedford Row to the chambers of Mr Cairns. That was the tide of his affairs which taken at the flood led on to fortune. Lest such a story as this should create too great expectations, it should be remembered that the personality of Mr Cairns at the Bar was as striking as that of Mr Gladstone in the House of Commons. His presence, his intellectual force, his profound knowledge of law, and the copious, exact and simple language in which he clothed his argument were such as to command success anywhere and under any circumstances. His great rival, Mr Palmer, was also a counsel who must have risen to the highest position under any circumstances, for he was a most

brilliant and powerful advocate. He, however, had friends ready from the first to do all they could for him.

But as an example of the sort of accidents which may bring a brief to a modest beginner, I may tell the following story. One day I was sitting at the extreme end of the row of the Junior Bar in the old Queen's Bench Court at Westminster. From a small window in the robing-room upstairs the whole of the Bar could be seen. The managing clerk to a firm of solicitors, having in his hand a brief for counsel to move for a rule *nisi*, went up to the robing-room and asked Mr Howard, the manager, whether he could tell him the name of a junior counsel to whom the brief could be delivered. Now Mr Howard had on his staff an attendant named "Ben," a very worthy man to whom I had shown some trifling kindness, such as asking him about his health, and to whom I had given an old coat and a Christmas box. Ben seized hold of the clerk, led him to the window, pointed me out to him and advised him to entrust the brief to me. Down came the clerk and delivered the brief to me, and I got a

"rule" which later on was made "absolute." It was a trumpery county court appeal, and and at the time I thought no more of it. Starting with that "old coat" brief I got into a large amount of business with the firm of solicitors from whom it came, for at that time they had cases of all sorts and conditions, abounding in appeals and involving important interests. Not long ago a visitor told my wife this story, declaring on the highest authority that the adventure happened to Charles Russell, and was the starting-point of his brilliant career.

If a young man gets into a big case, does his part fairly well, and wins, he is apt to imagine that he is on the high road to fortune. A chancery counsel, now a judge, bestowed infinite labour on a very difficult case and won it. The solicitor delivered his next brief to the junior counsel who had appeared on the losing side. His excuse was that the opponent had fought so well. On the other hand, some insignificant case will turn out to be the beginning of great things. In early days I had a brief in a very rotten case. It was tried before the late Mr Justice Blackburn (Lord Blackburn)

and a common jury in the old Bail Court at Westminster, and my opponent was that grand old gentleman, Mr Montagu Chambers, the leader of the old Home Circuit. Mr Chambers was gazetted an officer in the Grenadier Guards about the year 1816. His elder brother had fought at Waterloo. Finding that neither Buonaparte nor anyone else was likely to disturb the peace of Europe he forsook the sword for the gown. He was counsel for the plaintiff and I was for the defendant. My client had bought some goods but had omitted to pay for them, had used them, and then alleged that they were worthless. This was a miserable defence, but I struggled on as best I could. When Mr Chambers, who was then more than seventy years old, came to his reply he said, "Gentlemen of the Jury, my youthful learned friend reminds me of the chimney-sweep boy who went into a confectioner's shop, put his black finger into the middle of a raspberry-jam tart and said, 'How much is it,' and when the confectioner said, 'One penny,' the boy said, 'I won't have it.'" Of course I was glad when the farce was over and tried to forget what a lot of nonsense I must have

talked to justify such a reply. To that case I am able to trace the pedigree of many briefs of great importance, and the family is even now very far from being extinct.

The late Lord Sherbrooke (Mr Lowe) once held forth to me on the absurdity of anyone expecting to get a start at the English Bar unless he was related to busy men in the solicitor's branch of the profession. This opinion was of course erroneous. "If," said a learned counsel, "I get a brief from my brother's firm everyone says, 'He only got it because the solicitor is his brother,' and if I don't get the brief then everyone says, 'What sort of a counsel must he be when even his own brother will not trust him with the case.'" If anyone bearing the name of an eminent solicitor and very nearly related to him desires to be called to the Bar, he would be well advised to change his name on becoming a student. He might by this simple artifice avoid all the drawbacks and win all the benefits of his relationship. But, after all, it is very difficult to determine what constitutes success in the profession. If you

have a constitution of iron and the digestion of an ostrich you may rise every morning before five and keep at it for fourteen consecutive hours, Sundays and weekdays, and if you are ambitious you can sit in the House of Commons, or rather walk in and out of the lobbies on divisions in your spare time, and this sort of thing would perhaps be all right if you were not restricted to one life and that a very short one.

I never knew a man of greater physical force than Charles Russell. Ten years before his death he rode in one day on horseback from his house in Harley Street to Cambridge, and the next morning he rode from Cambridge to Newmarket, arriving at the Heath before nine o'clock; yet his strenuous life was brought to an untimely end by the pressure under which he worked. Sir John Rolt, who began his life in the law as a paid clerk in the office of Messrs Pritchard & Sons, and who rose to be Attorney-General and was afterwards Lord Justice, said that no honour, no rank and no wealth could compensate him for the labour he had undergone in his struggle for

success. I quote the wise words of Mr Choate, spoken at the Mansion House on the 5th May last year: "I was brought up to believe that work was the end and aim of life, that that was what we were placed here for. But on contemplating your best examples I have learnt that work is only a means to a higher end, to a more rational life, to the development of our best traits and powers for the benefit of those around us, and for getting and giving as much happiness as the lot of humanity permits." And Gustav Frensen writes: "Woe to the man who is only a hunter after bread or money or honour, and has not a single pursuit he loves, whereby, even if it be only over a narrow bridge, Mother Nature can come into his life with her gay wreaths and her songs."

I was sitting next to one of the first jewellers in London at a city feast, and we had discussed the tremendous energy of American traders and the invincible pertinacity of the Germans. I said to him, "You tell me all this, but you do not explain why this country holds its own at all." "The

reason," he replied, "is that the Americans and the Germans exhaust themselves ten years earlier than the Englishmen, so that the spare vitality of the latter makes the result equal."

It should never be forgotten that "Life is not a fair field and no favour." The only things in life which can be so designated are examinations at school and college, and for that reason the retrospect of those contests is always to me delightful. They were the best examples of ideal justice. But in after life political, social, family and self-regarding interests are tremendous forces, and for that reason promotions to offices great and small are open, and justly open, to criticism in all professions. I once met the late Mr W. E. Forster at dinner and walked home with him at night. It would be difficult to find in our political history a man of nobler character. He said to me, "If I had been at Eton I should have been in the Cabinet ten years earlier." The wise man ought never to feel hurt when he sees greatness thrust upon his neighbour, however unfitted the latter may be for the office, because he knows that it was so in the beginning, is

now, and ever shall be. Now and then there is a shout of indignation at a job of extraordinary wickedness, but it is only a shout, for the thing cannot be undone. It is best to shrug the shoulder and pass on. In 37 Henry VIII. c. I., there is a recital that certain persons have by labour, friendship and means attained and gotten grants by His Majesty's letters patent, and that sort of thing still goes on.

The general public have no great opinion of the great lawyers who become law-officers of the Crown and judges. They do not understand, and so do not read the reports of civil causes. Their idols are the shining lights of the Central Criminal Court. Mr Percival, the well-known horse-dealer, said to me, "I am afraid, sir, you are not getting on so well at the Bar as I could wish. I thought that long before this I should have read in the newspaper your defences of three or four first-class murderers." He never could quite understand why the late Mr Montagu Williams was not made Lord Chief Justice of England, and his astonishment on the point became greater when he

read the memoirs of that clever advocate. If I tried to explain to him that the training of those barristers did not as a rule fit them for such exalted positions, he triumphantly destroyed my argument by reminding me that Lord Halsbury was the first man of his time in that line of business. One of his friends, an illustrious chiropodist, stood in jeopardy of the law for assault and battery committed on a rival, and the wife of the former came to Mr Percival in sad distress. "Now," said Mr Percival, "if we retain Mr Hawkins, Mr Sergeant Ballantine and Mr Henry Bodkin Poland and have him well defended, we may get him off with six months' hard labour." However, his opinion of the judges when he was himself a litigant in horse causes was not very high, for as he justly observed the horse is all right in the dealer's yard, but who is to prognosticate what he will do when he has once passed out of the gate.

I am afraid that if Mr Percival were still alive his admiration for the leading counsel of the Central Criminal Court would be to some extent abated. The Act which

allows prisoners to give evidence is on the whole a wise measure. But the blot on it was hit not long ago by my learned friend Mr Avory. The prosecution now put before the jury a case so slight that before the Act the judge would have directed a verdict of "Not Guilty," or the jury would have found that verdict. But as the law admits the evidence of the prisoner, the case goes on in order that his explanation may be heard, so that the golden principle that the prosecution must satisfy the jury by the evidence adduced on behalf of the Crown is no longer observed. That appeared to me to be a strong and just criticism from the mouth of the first criminal lawyer of the present time. But whether it be just or not this much is certain, that the Act has destroyed the art of advocacy in criminal prosecutions, reducing them to the level of ordinary *nisi prius* cases.

It is not often that counsel feel exultant over their success in a law suit or downcast at failure, but I confess that I did rejoice when my learned friend, Mr Danckwerts, who was with me in the action which

knocked the conceit out of the Windsor Corporation and abolished the tolls on Windsor Bridge, convinced the Court of Appeal that his view of the law was right and that of Lord Russell was wrong. But the conceit was also knocked out of me soon afterwards when I paid a visit to the lady who taught me in my earliest days, and in whose presence I mentioned that victory. "Oh, yes," said she, "I read in the newspapers that you had won an action which was brought to recover twopence"; that being, of course, the amount which the plaintiff had paid under protest to test the right of the corporation. This observation prevented any exaltation over the abolition of the toll at Maidenhead Bridge, in which Mr Danckwerts and I played a not unimportant part.

But the real honour of these two victories rests with Mr Joseph Taylor of Eton, and with his solicitor, Mr Edward Betteley. These gentlemen conceived the idea that the tolls taken by the Corporation of Windsor from passengers over the bridge were illegal, and Mr Taylor brought the

action which determined the question in his own name and at his own risk, and it will, in my opinion, remain a blot upon the fair fame of Eton College that its provost and masters never gave Mr Taylor a word of encouragement and never made an effort to indemnify him against the costs, to which he was put in fighting a battle and achieving a victory from which they derived more benefit than did any other body of persons. Although he was successful and the Corporation of Windsor had to suffer smartly in costs payable to him, yet such litigation carried up to the House of Lords of necessity involved the winner in costs over and above those which the corporation had to pay, and I, having been for many years associated with Eton and the sister college at Cambridge, felt that better things might have been expected of the guardians of the foundation of King Henry VI.

When we see barristers year after year attending chambers in Lincoln's Inn or the Temple and making no progress at all in the profession, we must not set the failure down to bad luck or want of friends. So

far as forensic business is concerned, it is manifest that certain physical, moral and intellectual qualities are essential to success. Yet every year there are many men called to the Bar who are obviously lacking in these qualities. Often it is the fault of parents who insist on choosing for their sons, and who of course are the worst possible judges. I knew a solicitor who was one of the ablest men I ever met, and a man who had deservedly achieved a great position. He had two sons in the law, one at the Bar, the other a solicitor. To anyone, not their father, it was as clear as the sun at noonday that the elder ought to be a solicitor and the younger a barrister. But the father had arranged it the other way, and although the younger one was a most worthy successor in the business of his father, yet if he had been a barrister he would in all human probability have risen to the highest positions in the profession. The elder was a sage man with a business mind and a pleasant manner, but when he was face to face with a jury, neither he nor his audience looked at all comfortable. Of

course there are reporters, and revising barristers, and recorders of insignificant cities and boroughs, and there are county court judges, and men struggle on in the hope of attaining to these offices. But these are not the goals of their ambition on the day of call.

It is superfluous to speak of the loyalty of counsel to their clients, both as regards industry in mastering the case and in strenuous effort to win. Faith in their integrity is universal among the educated portion of the community, although among certain classes scepticism is not unknown. I remember marching out of the Temple in the ranks of the Inns of Court Rifle Volunteers in all the pride and panoply of war, and hearing in Fleet Street this conversation: "Fine fellows, ain't they, George?" "Yes, Bill, they are. Why, they are bigger and better than the Grenadiers. What a pity they are such a set of rogues." There is only one instance on record of a barrister being corrupted by a bribe, and that scandalous affair happened half a century ago. The offender was disbarred for a fraud not

connected with the profession, but when he applied to the benchers of his Inn to be restored, Sir John Karslake, as he himself told me, insisted that his petition should be rejected on the ground that the counsel had accepted a bribe to refrain from cross-examining a witness. I suppose also that most of the members of the Bar are well born and well educated, and may be regarded as gentlemen. But that was not exactly the opinion of the late Sergeant Dodd, formerly of the Rifle Brigade. That veteran, whose energy and ability at drill could not be surpassed, was at his favourite post in Lincoln's Inn when he was saluted by ex-Private Grimshaw of the brigade. "Why, sergeant, whatever are you doing here and in that uniform?" "Well, Grimshaw, I drill the Inns of Court." "Who are they, sergeant?" "Why, the barristers to be sure." "I suppose, sergeant, they are all gentlemen." "Well, just about half of them," exclaimed the sergeant.

The first assizes that I attended as a barrister were held at Cambridge, and the case of Lord Coventry *v.* Willes was tried

before Mr Justice Crompton and a special jury. The plaintiffs were the stewards of the Jockey Club, and the defendant was "Argus," the sporting correspondent of the *Morning Post*. Mr Willes had been warned off "Newmarket Heath," and the action was brought against him, because he persisted in coming to see the races. Mr Keane, Q.C., made a desperate defence for "Argus," and said all sorts of absurd things about the Jockey Club. I knew every man on the jury, and I knew that not one of them would find a verdict against the Jockey Club if he could help it. The judge too was just as keen to smash up "Argus" as were the squires on the jury. The summing up was short and decisive, and a verdict was instantly given for the plaintiffs, and since that date no one has disputed the right of the Jockey Club to control the race-course. The joke of the thing was that in the preceding November a demurrer had been argued at Westminster in the same action. Some bold pleader had set up as a defence to the action that "From time whereof the memory of man runneth not

to the contrary horse-races had been, and of right ought to have been, and still of right ought to be holden on Newmarket Heath at certain reasonable times, to wit on certain days in the months of April, July and October in each and every year, and that from time whereof the memory of man is not to the contrary there hath been and still of right ought to be an ancient and laudable custom, that all the subjects of the realm have used to enter, and still of right ought to enter and stay and remain for a reasonable time for the purpose of witnessing the said horse-races." "Legal memory" goes back either to the 6th July 1189, or to the 3rd September 1189 or to the 11th September 1189. Which of these is the true date from which the memory of man starts on its race in the contemplation of the judges, no one knows. But the late Lord Chief Justice Cockburn, while observing that the right to hold the races seemed, according to the pleader, to be laid in the horses and not in the owners, declined to believe that Richard I. ran horses at Newmarket, it being much more probable that

the monarch of the lion heart tried them at long distance running between Joppa and Jerusalem. The counsel said that Henry VIII., when he had time to spare and was not getting rid of his wives, and James I., when he was not writing his counterblast against tobacco, had horses in training at Newmarket, but even these historical revelations had no effect. So old Blackstone was brought into court, and as he said that there could not be a custom in all the subjects of the realm to go to Newmarket three times a year, "Argus" was blown out of court.

At an early date I migrated from the Norfolk to the old Home Circuit. In those days the business on the Home Circuit was very heavy. I have seen a list of one hundred and fifty causes at the Assizes at Kingston-on-Thames, and a list of one hundred and sixty causes at Guildford, the spring assizes being held at the old Royal Town, and the summer assizes at Croydon and Guildford in alternate years. The Judicature Act destroyed all this business, and when we grumbled at this extinction

the Powers said, "Oh, you people have no grievance, for while everybody else will be scattered over the country during the spring and summer assizes, you will have the Metropolis to yourselves, because we mean to have continuous sittings in Middlesex, and of the business there you will have the monopoly." So we abandoned our agitation, and now we know that the "continuous" sittings in Middlesex mean innumerable "solutions of continuity." In those ancient days the Home Circuit on its social side as well as on its legal side was a great institution, and "Grand Night" at the principal towns was kept with solemnity and with due regard to tradition. Before my time the Circuit indulged in the luxury of a poet who burst into song on memorable occasions. The Common Law Procedure Acts were the work of Bramwell and James Shaw Willes, and the poet represented Bramwell dreaming pleasant dreams and seeing delightful visions until his happiness was rudely interrupted by the ghosts of the ancient pleadings and writs, which were abolished by the Act of 1852:—

"Traitor we curse thee one and all,
We are demurrers and rules to compute,
And nunc pro tunc, you barbarous brute.
Re. Fa. La. Pone and great Sci. Fa.
Qui Tam and Quare Impedit,
Absque hoc and Pluries Writs
And surrejoinders and surrebutters.
You grim ghost, who gloomily flutters,
Veil your eyes! it is the awful spectre
Of what was once the casual ejector.
He who lies like a swab below
All gone to pie was once John Doe.
That lathy phantom you see afar
Was once, you traitor, the Common Bar.
And yon brown blotch—none now can be duller
Looked cheerily once as "express colour."
There Trover flits and case and assumpsit,
Who, whether he likes it or whether he lumps it,
After his centuries of hard service,
Is turned out of doors by Sir John Jervis."

And at a later stage of the dream Lord Brougham appears before the same commissioners and addresses them in the turgid style for which that voluble personage was so celebrated :—

"Crass, dense, intense in stupidity,
Nor less obtuse in morality,
And to all feelings of decency,

Beyond all hope lost to eternity
Must that foolish commissioner be,
Who would dare to venture to think of doing
What, if done, must be his and his country's ruin.
To venture, I say, to presume, to dare,
To put his hand to a single hair,
Be the hair little or be it big,
That bristles on Themis' hoary wig—
Until that I much pondering
Upon all these things consent to bring
From the land of the Yankee whither I go
The absolute wisdom of Doe and Roe—
Till then, thou crass commissioner, know,
That if thou wouldst escape grief, sorrow and woe,
Regret, compunction, and all the train
Of ills attendant on my disdain,
Stay thy rash hand, be counselled, refrain
From the meddling work—till I come again.
These dreadful words 'I come again'
Put the commissioner out of his pain.
The thought was more than flesh could bear,
And up from his couch he sprang in despair.
And the last he saw of that wild pell mell,
Was Lord B. shipped for Boston with Dora Snell."

In those days also the Attorney-General of the Circuit was ever on the alert to bring to the bar of justice, as represented by the

Bar mess, all persons guilty of standing for Parliament, or of becoming Queen's Counsel, or recorders, or even of smaller misdemeanours. Thus on a festive evening the late Sir George Honyman presented to the court a bill of indictment against one of the leaders in this form.

Home Circuit to wit,—

The jurors of the Home Circuit upon their oaths present that William Shee of Maidstone in the county of Kent, serjeant-at-law, being an evil disposed person and not having the fear of the junior before his eyes heretofore, to wit on the 20th day of March in the year of our Lord 18— and in the first year of the reign of the new junior at Maidstone aforesaid and within the jurisdiction of this court in a certain open court there with very many people therein, to wit one hundred attorneys, and two hundred briefless barristers, did hold up a certain brief of a certain brother of him the said William Shee, to wit one William Fry Channell, serjeant-at-law, of great thickness, to wit the thickness of ten feet, and which said brief was then and there

indorsed with a certain fee of great magnitude, to wit a fee of forty-two guineas, and did then and there ask a certain witness, to wit one Theophrastus Snooks, "How thick was it? Was it as thick as this?" Meaning thereby the said brief and thereby then and there intending to cause divers jurors, witnesses, attorneys, gaol birds, and others (whose names are to the Attorney-General unknown) to believe that such brief then and there was the brief of him the said William Shee, whereas in truth and in fact he the said William Shee never had a brief with as large a fee or anything like it as the said William Shee then and there well knew, to the great aggrandisement of him the said William Shee and in contempt of the junior. Indorsed G. W. Bramwell. "SWORN in Court." "A true Bill."

The glory of these days has departed, and now the old Home Circuit and Norfolk Circuit are merged in the South Eastern Circuit. In a recent examination an Eton boy was asked this question: "What is the most pathetic line you know?" His prompt reply was "the South Eastern," and I am

quite sure that the South Eastern is the most pathetic Circuit. It is but the ghost of the two which it has devoured. There is little business, and most of it is very thin. One judge only is sent and the greatest uncertainty prevails as to the day on which the civil business, if any, will be taken. The result is that counsel wait in town until the moment when the telegraphic message bids them start, and when they have arrived at the Circuit town they are in constant anxiety lest they should be suddenly summoned back to the courts in the Strand.

Not long after I was called I held a brief for a lady whose houses were required by a railway company and whose claim for compensation was to be adjusted by arbitration under the Lands Clauses Act. The case presented no difficulty, and inexperienced though I was in this class of business I had no lack of confidence when I had read the brief. But before the reference came to a hearing, I was solemnly informed that the lady had said to her solicitor these words: "I have prayed night and morning that the heart of the arbitrator may be turned to give

me a good award." And I own that my anxiety then became great. It was not my business that if this extraordinary prayer were answered the shareholders in the railway company would suffer an injustice, but what I did fear was that if the award turned out to be insufficient in the opinion of the owner of the property, the blame would rest on me alone. I have never had a like experience since, and indeed the claims put forward against railway companies, supported though they have been by the evidence of eminent surveyors, have not often been such as to merit the sanction which was thus invoked. However, in all ages different opinions have prevailed both as to the propriety and efficacy of prayer. The Duchesse de Novilles prayed before a statue of the Virgin of the church of the Abbaye-aux-Bois to obtain for her husband, the Duc-Mareschal, the Orders of the Garter and of the Holy Roman Empire, being the only titles he did not possess, and my sporting friend, the late Major Elwon, prayed fervently that his famous horse, Jack Spigot, might win for him the City and Suburban Handicap with

the big bets for which the Major had backed him, and the horse won in gallant style.

Public morality would be advanced if all expert testimony were abolished in courts of law and at arbitrations. The Admiralty system of assessors ought to be universally adopted. Suppose that a man is injured and brings an action to recover compensation, the court ought to name a surgeon to examine the plaintiff one week before the trial, and to write out a full report to be delivered to the judge with a copy for the counsel on either side. The surgeon who has attended the man could of course be called to state the facts, but he should not be allowed to depose to the condition of the plaintiff at the time of the trial, or to offer any opinion as to the probable date of recovery. The same rule should be applied as regards building, engineering and all other cases where it is now the practice to adduce expert evidence. To call three surveyors on oath to appraise a property on behalf of the owners at £10,000, and then to call three surveyors on behalf of the company to swear that its value is only £3000 is a scandal of high degree. The

conflict of surgical opinion is not so bad because the element of uncertainty is great, but there is quite enough to justify a reform in this direction.

Perhaps the most strange case with which I have been connected was tried at Norwich Assizes many years ago before Mr Justice Hawkins, now Lord Brampton. The action was brought by the widow as administratix of her deceased husband to recover one thousand pounds on a policy against death by accident. The deceased had resided near Gower Street Station, and one of his favourite diversions was to visit Madame Tussaud's exhibition, which in those days was in Baker Street. There was no doubt that he had on the fatal day travelled by the Metropolitan Railway from Gower Street, spent some time at the exhibition, and had then walked back to Baker Street Station in order to return home by train. The driver of a train going west from Baker Street to Edgware Road had noticed a dark object lying between the rails on his right hand, and information having been given to the Inspector at Baker Street by telegram, the latter instituted a search. The

deceased was found lying in the tunnel about one hundred yards west of Baker Street Station on his back. The hands were close to the sides and the feet were close together. The head was towards Baker Street and the feet towards Edgware Road, and the body lay between the metals at an equal distance from each rail. The back of the head was smashed in, but otherwise there was not a mark on the body, and the clothes were not torn, injured or soiled. The case for the plaintiff was that the man had wandered into the tunnel and had been knocked down and killed by the engine of a train which had passed over him. The defendant company suggested suicide. But no one on either side, counsel or witnesses, could suggest any plausible explanation of the condition of the body or clothes upon either of these theories, for if the engine hit him on the back of the head, where the only injury was, how came he to be lying on his back with his feet towards Edgware Road? And how could the position of his hands and feet be explained? I thought that when we got into court some light might be thrown on the case by the learned judge, but his lord-

ship kept strictly to his judicial function, and as Sherlock Holmes had not then begun to practise in Baker Street the mystery remained unsolved. The jury failed to agree and were discharged without a verdict.

Another case, which at the risk of egotism I will mention, was the action against Mr Maskelyne, the clever conjurer, to recover £500, the reward which he offered if anyone could do his box trick. Two young men accepted the challenge, and made a box of the same dimensions as that used by Mr Maskelyne, out of which one of them could escape under apparently the same conditions as the gentleman at the Egyptian Hall. At the first trial the jury disagreed. At the second trial the jury found a verdict for the plaintiffs. The defendant appealed, but the Court upheld the verdict. Then Mr Maskelyne, with admirable courage, appealed to the House of Lords. When we got there two noble Lords thought that the verdict was wrong, and the other three thought that the verdict could not be disturbed. So my clients got their £500, but as the Duke of Wellington said of the Battle of Waterloo, "It was such a

near thing, such a near run thing," I have good reason for believing that if Mr Maskelyne had won the day in the House of Lords he would not have pressed his adversaries for the payment of his costs, and I am not sure that he would not have offered a gift to his gallant and ingenious opponents by way of consolation.

When the late Sir Joseph Chitty was a judge of first instance a case was tried before him in which I was counsel on one side and my friend, Mr F. Low, K.C., was on the other side. There was a lady in it, who had for many years carried on a substantial business as a builder, and worn male attire, and had been regarded as a man by her neighbours. This *rôle* she had assumed for convenience in the transaction of business. Finding a solitary life unbearable, she had invited another lady whom she had known for many years to live with her, but the difficulty was that scandal might thereby be caused. So she hit upon the idea of going through the ceremony of marriage with her friend, the builder, of course, passing as the bridegroom. The ceremony took place in a

church, and the couple lived for years in happiness. But Sir Joseph Chitty declined to believe a word of this story, of the truth of which I entertained no doubt, and the learned judge, with the marriage certificate on his desk before him, evolved from his inner consciousness a Dutch husband, and turned my bridegroom into the bride. The Dutch gentleman, according to the learned judge, could not exactly say *Veni, vidi, vici*, but *veni, vidi, fugi*, for what became of him after the ceremony the judgment did not explain. I suppose that the improbability of one woman marrying another was to his lordship gigantic, but, of course, this was by no means a solitary example. On the 20th August 1904, at page 515 of *Tit-Bits*, there was an article headed "Ladies who walk in Male Attire." In it there are recorded the cases of a lady who had for nearly fifty years worked as a painter and decorator in male attire in the docks; of Surgeon-General James Barry, an army officer; of M. Falle of Brittany, twice wed, and of Henri Blanc of Provence who had married and buried three wives, all of these supposed men being

of the female sex. And these by no means exhaust the list. Sir Joseph Chitty was a master of the principles of Equity and thoroughly versed in the practice of the Court of Chancery, and in addition to these accomplishments he was a very great common lawyer, but I am afraid that he would not have excelled as a common juryman. His achievements on the river and in the cricket field are fresh in the memory. Few men have been so popular in the profession as he was, and we all felt his loss grievously.

I do not suppose that many barristers have had the misfortune to be themselves litigants. I had a strange experience of that kind. Many years ago one Allan had a grievance. Morally he had right on his side, but he had no case whatever in point of law. However, he declared war against his enemies, and died pending suit. His executor took up the struggle and he died, and then a friend of the executor began a third campaign. In the earlier history of this litigation, which lasted for more than twenty years, the defendants were a joint stock company and its promoter, but the

friend of the executor did not limit himself in this way. He brought actions against Ministers of State, and Charles Russell when Attorney-General appeared as counsel for them. I have been counsel for the company and the promoter on several occasions. So at last the friend did Charles Russell and me the honour of putting us into one of his writs, and he claimed against each of us a quarter of a million of money. The foundation of his claim against me was that I had been "covinous" when counsel against the executor in the House of Lords, and was liable to pay £250,000 under a statute passed in the reign of Queen Elizabeth. The whole thing presented itself to me as an elaborate joke, but Charles Russell, whose sense of humour was not great, waxed serious over the matter. He insisted on having a prolonged consultation, and arranged that he and I should appear by separate solicitors and counsel. The plaintiff must also have taken a serious view, for he set the action down for trial, and it came on for hearing in due course. I was not able to be present, but I understood that the learned judge who

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tried the action displayed no appreciation of the absurdity of the whole thing. I rather regret that we were not defeated, for the Government must have passed an Act enabling it to pay the money in relief of its Attorney-General, and the Treasury could not in that event have left me out in the cold. However, we won the day, and it is hardly necessary to add that we did not tax our costs against the plaintiff. My solicitor's bill of costs, modest as it was, did not present itself to me as a jest. I forgot to ask Charles Russell whether the Treasury indemnified him. It was a great disappointment to me that the suitor did not bring an action against Frank Lockwood, also as Solicitor-General. He would have thoroughly enjoyed himself over it, and we should have been richer by several more clever sketches. It was always a delight to me to have a case against Frank Lockwood, as it meant a drawing of some sort, besides a string of jokes between us. We were waiting for the trial of an action between the captain and mate of a tramp ship, and Lockwood drew two delightful pictures to illustrate our rival

contentions. In one the captain was hurling miserable pilgrims all about the deck, and under it were the words, "This is how Witt says we treated the Pilgrims." In the other picture three pilgrims were sitting in comfortable deck-chairs, clothed in gorgeous dressing-gowns, and the captain was standing in front of them carrying a huge waiter laden with sherbet, coffee and pipes, and under it was written, "This is how I say we treated the Pilgrims." Unfortunately, the judge, Lord Field, got hold of the sketches, and after going into convulsions over them he put them away in his book. When the exhibition was held in King Street of Lockwood's drawings, I worried Lord Field to send these, but he had mislaid them, and I am afraid that they will never see the light. However, Lockwood gave me an excellent picture of myself in the stage-costume of a ship's mate indulging in a hornpipe, with a telescope under my arm. I have also a picture representing me as the Chief Rabbi, because Lockwood happened to come into court and saw me talking to Dr Adler. Besides these artistic efforts

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which contributed so much to our gaiety, he generally had a good story ready wherewith to fill up the gaps in the day's work.

I will conclude this chapter with a notice of an occurrence which must be very rare in the history of the Bar. I have argued a case before the sovereign of a great country. Lord Esher was presiding in the Court of Appeal, and my opponent was nearly at the conclusion of his argument when, after a slight commotion, a young lady accompanied by two ladies of more mature years came in and sat on the Bench close to the Master of the Rolls. I had not the least idea who they were, the argument proceeded, and I briefly addressed the Court. The young lady was no less a personage than Queen Wilhelmina. My vanity does not go so far as to suppose that she was told who the counsel was, but it is at least a coincidence that this royal lady should have listened to an address from a namesake of the Grand Pensionary, the personal and political enemy of the House of Orange.

CHAPTER III

THE BENCH

The general advance in education and the lack of veneration which is at the present day the offspring of youthful omniscience and infallibility tend to diminish the dignity of the Bench in the public mind. It is by no means an uncommon thing in the course of a trial to hear criticisms of the judge from the mouth of the laity, and although they are sometimes unjust, because the critic does not appreciate the difficulties in which the judge is placed, yet they are often shrewd. The abnormal complexity of modern affairs adds greatly to the judicial task, and the mass of evidence is in some cases overwhelming. Three or four large joint stock companies, created and maintained by the tortuous brain of a financier, each formulating with each contracts that were never intended to be intelligible, with volumes of

minute books and correspondence obscuring rather than elucidating their subject matter, are submitted to consideration, and the unfortunate judge has to pick up the thread of the story as best he can from the more or less lucid explanation of counsel, and the more or less logical order of the evidence. The reports published fifty years ago may be searched in vain for cases approaching in difficulty those which have become numerous since the Companies Act of 1862, and the Judicature Act, 1873, have been passed, and since business has been transacted by or through correspondence, telegrams and telephones.

This modern condition of things in the law courts renders it indispensable that counsel should put before them as their first duty that of assisting the judge. It may be that that duty is more loyally discharged by my friends of the Chancery Bar than it is by the common lawyers. But the moment a judge imagines that counsel are not trying to assist him but to embarrass him, his task is vastly increased, and his success is in grave jeopardy. It is much better for a

judge to trust counsel, even if now and then his faith is misplaced, than to conduct the business of his court upon the hypothesis that craft is being used against him.

I used to admire Vice-Chancellor Sir Richard Malins, and I read with sympathetic interest the charming sketch of him in the recent novel, *The Vice-Chancellor's Ward.* But he always seemed to think that the very able men who practised before him were there to bother him, and that he could get on much better without any counsel at all. The result was that, although the counsel had no idea of misleading him, yet they could not resist the temptation to indulge in the sport of worrying him. The miserable Shed in Lincoln's Inn in which his tribunal was erected was always crowded with visitors, and there was generally some excellent fun going forward. In those days the suitor in chancery, or rather his solicitor, could choose his judge, and when a man had a glaring moral grievance without either law or equity on his side, he used to file a bill and mark it for the Vice-Chancellor, and move the Court for an injunction. The counsel for the

defendant showed by argument and upon authority that no relief could be given. But Sir Richard saw no reason why, if Lord Loughborough and Lord Hardwicke could in their day manufacture equity, he should not do the same, and then after an eloquent denunciation of the defendant, his counsel, and sometimes his solictor, he would order the injunction to issue.

I used to ride in the Park with him, and he would lament to me that the members of the Bar who had just been called did not attend his court. "How," said he, "do they expect to learn the law and the practice if they do not attend my court?" So I thought I would go and learn, and I went. Unluckily there was a very dull case for hearing, and I had *The Times* in my pocket, so, wanting to read a judgment of Sir James Shaw Willes I opened the paper and was trying to understand what that most learned judge was driving at when up came the usher and said to me, "Sir, the Vice-Chancellor requests that you will not read the newspaper in his court." I should not have felt aggrieved by this order if the

judge himself had kept to the matter in hand, but when Mr Benjamin came into court and mentioned that the principal event in his case occurred on the 2nd September, and the Vice-Chancellor exclaimed, "Mr Glass, was not that the day on which you and I dined together at Chamounix?" I did feel that I had been interfered with unrighteously. On another visit to the Shed the learned judge was hearing a rather remarkable case. A traveller had been hurt on the railway, had been compensated and had signed a receipt in full. Some months afterwards he filed a bill to set aside the compromise. His case was that the shock of his accident had made him dumb or stupid, and that his mind did not go with his act when he signed the receipt, but that he had since had another shock, which had restored him to speech and reason. The Vice-Chancellor said, "Mr Glass, I never heard of a case like this before. Is there any precedent?" Then that famous counsel turned to his junior and said, "What was the name of the husband of Elizabeth?" and the junior having told him, Mr Glass said, "Oh, yes, your honour, there is the case

of Zacharias." "Where is that reported, Mr Glass," replied the judge. Now when this sort of thing was possible, it is not to be wondered at that the judge had to be on guard with his Bar.

Vice-Chancellor Bacon was also to some extent imbued with the idea that counsel were there to obfuscate his mind. Now and then he had some reason for that opinion. A German trader had sent an agent to London to push his goods. That agent registered a trade-mark on his master's goods and having quarrelled with his employer had the audacity to claim the trade-mark for his own benefit. The counsel for the master instead of so stating the point took three parts of a day to open the case, and in the course of his speech gave a fine essay on the law of trade-marks, all of which was utterly irrelevant. Some excuse could be made for him, because he was what is called a patent lawyer, and a patent lawyer is of no use at all if he cannot keep the mind of the Court away from the real point for at least two days. Of course the judge, who was as sharp as a needle, understood what was going on, but he let everyone alone to see, I suppose,

how long they would keep it up. The witnesses were all Germans, and all spoke the most dreadful English. After all the evidence and all the speeches were finished the judge on the third day said, "It is an old abuse of God's patience and the King's English." On another occasion I heard this in his court. Counsel to witness, "You are the clerk of the market, and have been so for thirty years?" Witness, "Yes, and my father before me." Counsel, "Oh, never mind your father." Witness, "But I do mind my father." The Vice-Chancellor, "He means, Mr Hemming, that though his pedigree does not interest you, it is of consequence to him." On the death of the learned judge I was made a Bencher of Lincoln's Inn in his place, and to this day some of my country friends insist that I also succeeded him in his office of Vice-Chancellor of England, being thereto induced by a paragraph in the newspapers at the time. One of the greatest feats the judge ever performed was to sit in court on his ninetieth birthday and try a case in which Mrs Weldon appeared. That talented lady was involved in many law-suits,

and one day one of her cases was called on before Baron Pollock. The lady was not in court and the judge was informed that she was at that moment engaged in addressing the Court of Appeal. Baron Pollock said, "This lady has now such a very large business at the Bar that we must give her every indulgence." Mrs Weldon said many clever things in court, but one of her very best sallies was in the Court of Appeal. She was endeavouring to upset a judgment of Vice-Chancellor Bacon, and one ground of complaint was that the judge was too old to understand her case. Thereupon Lord Esher said, "The last time you were here you complained that your case had been tried by my brother Bowen, and you said he was only a bit of a boy and could not do you justice. Now you come here and say that my brother Bacon was too old. What age do you want the judge to be?" "Your age," promptly replied Mrs Weldon, fixing her bright eyes on the handsome countenance of the Master of the Rolls. No man ever enjoyed a clever repartee more than did Lord Esher, and if counsel had a smart answer

ready so much the better. What he could not endure was a counsel who knuckled under to him. Often he would advance some proposition of the most heretical character from inborn love of paradox or for the sake of testing the man before him, and if the counsel meekly said, "Yes, my lord, I take your ruling on the point," that man at once passed into the class of persons unworthy of serious consideration.

On the 14th July 1904, a learned judge of the Court of Appeal said, "According to my understanding the law as laid down by the majority of the Court of King's Bench in Blundell *v.* Catterall has been recognised ever since by the whole of the profession as an accurate and binding statement of the law. If that is so I do not think that we ought, after the lapse of eighty years, to upset the law as thus settled." Some years ago I was reading out to the Court of Appeal the judgments in that very case. "What," exclaimed Lord Esher, "is the use of reading out to us what *those old men* had got to say?" I hope that I can possess my soul in patience, but this was too much. So I replied, "Well, I would

have your lordship to know that great men lived before Agamemnon."

On another occasion I ventured to cite a passage from the Roman law to him. "Oh," said he, "if you are going to give us that we will go out to luncheon," and this he said although he must have known that the Council of Legal Education insist on students passing an examination in Roman law. One thing we could all admire in Lord Esher—while he did not care a rap for anybody or anything, and was always ready to hit out from the shoulder at Queen's Counsel, especially those who had a pleasant conceit of themselves, he never snubbed a young man, and any beginner might be sure of a compliment from him if there was any sort of justification for one. The great feature of the career of this very able judge is that he completely ruined the market for the old Common Law reports. Forty years ago extravagant prices were paid for the volumes of reports of cases in the old Courts of King's Bench, Common Pleas and Exchequer; and now they are almost a drug in the market. The main reason is that the decisions of the

Court of Appeal, while Lord Esher sat in it, have so fully explained the law on an infinite number of points, that it is seldom necessary to go further back for authority. It is, however, only right to add that the House of Lords during the last twenty years, in the exercise of its appellate jurisdiction, has exhibited such talent, industry and sound sense in things commercial and social that no previous epoch in legal history can pretend to rival its recent achievements.

In my early days Sir Colin Blackburn and Sir James Shaw Willes were regarded as the most profound lawyers on the Common Law Bench, but the former had rather a rough way with him. Once at Kingston Assizes he tried three men on some criminal charge. They were acquitted, and having been discharged they walked down towards Surbiton to celebrate their triumph by a row on the river. Hannen, then a junior on the Home Circuit, happened to overhear their conversation. "I say, Bill, how that judge did bully our counsellor to be sure." "Yes, he did, George, he did, but he were fair, for he bullied that there persecuting chap just as much."

Hannen told the story, and Mr Justice Blackburn on hearing it exclaimed, "That is the greatest testimony to my impartiality that I have heard since I sat on the Bench."

I had the misfortune to argue the last case which Lord Blackburn sat to decide in the House of Lords, and to me who had known him and admired him in the brightest period of his splendid intellect, it was most painful to watch his utter incapacity to grasp the matter in debate. Singularly enough I was the last counsel who appeared before the chief of his old court, Sir Alexander Cockburn. At twenty minutes before four o'clock on a Friday I rose, and the Lord Chief Justice asked me if the case was at all pressing, to which I replied in the negative. "Then," said he, "we will take it on Monday morning." He went home, dined according to his custom in the most frugal manner, and died in his chair in the evening. It was always a great delight to practise before him. His patience and courtesy to all, the sound rulings which he gave on law and on the admissibility of evidence, and the extraordinary lucidity and fairness of his addresses to the

jury made his court a model of what a *Nisi Prius* Court should be. It is of course a matter of opinion which of the judges of the past forty years were pre-eminent as judges when sitting at *Nisi Prius*. But I should place Sir Alexander Cockburn, Sir Robert Lush, Baron Huddleston, Sir Archibald Smith and Sir Henry Lopes (Lord Ludlow) in the front rank; and I should certainly relegate Sir William Bovill and Sir John Duke Coleridge to the rear rank. Sir William Bovill was always running breast high with one side or the other, and sometimes he would suddenly forsake one pack and gallop off with the other, ridiculing and belittling the efforts of the leaders with whom he was not running at the moment. I am not quite accurate when I say always, for at the trial of the ejectment action brought by the Tichborne Claimant he was as nervous as a Barrister with his first brief. "Think," said he to me, when riding in the Park during the trial, "if I make a single mistake there will be a new trial." And he assured me afterwards that the strain of that case

would be fatal to him. I met him at Homburg in 1872, and he then repeated to me his firm conviction that the "Claimant" had undermined his health and hastened his end. This was a distorted view, the real fact being that his health was not good enough to withstand the strain of a long or important trial. I tried in vain to persuade him to play at "*Trente et Quarante*" or "Roulette," thinking that the game might rouse him and take him out of himself; but no doubt he thought that a gamble of that kind would be indecorous. There were many reasons why Lord Coleridge made a dreadful mess of his trials. When he was Attorney-General he would come into court at Westminster, and if he had to wait for his case to come on he would go off to sleep at 10.30 a.m. just as if it was 10.30 p.m., and when I asked him whether he had been up all night or was not well he would say, "Oh, no," but he did not care to explain this predisposition to slumber. Of course it did not matter a bit when he was at the Bar, because as soon as his case came on he was keen, alert, and clever beyond imagination.

But it was a very serious matter indeed on the Bench, and nothing but his extraordinary quickness of perception enabled him to deal with the case at all. I have often seen his pen drop from his hand, while, in a sort of stupor, he was trying to take down the evidence, and I was very much shocked when a waiter at Ventnor explained to me that he spent his idle time in winter in the court of the Lord Chief Justice, where, he said "it is always warm and comfortable, plenty to amuse you and nothing to pay," and he added, "Now, sir, I quite understand that when you have had a day's hunting, and your dinner, and a glass or two of wine, you may take forty winks in your arm-chair, but how a gentleman can go off to sleep just after breakfast and keep so until it is nearly time for luncheon beats me altogether." If this waiter talked in this manner, how notorious must have been this terrible infirmity of the learned judge. But in truth Sir William Bovill, Lord Coleridge, and many other judges demonstrated the truth of the maxim that intellect and learning do not make a judge. There must be the right tempera-

ment, patience without weakness, the faculty of listening to and considering the evidence and arguments on each side with a power to make up your mind, and in practice these lesser virtues will more readily achieve success on the Bench than brilliant talent and boundless research. I may illustrate my meaning by giving a conversation which at this distance of time can offend no one. Sir Henry Lopes said to me, "I am not a clever man and I do not pretend to be a clever man, but I know how to try a case, and there has never been a new trial ordered in any one case heard before me. Now, Coleridge is a very clever man, and yet we are always ordering new trials in his cases." I ventured some few years afterwards to suggest to Sir Henry Lopes that although Lord Coleridge made many mistakes in his own court, yet his judgments in the Court of Appeal were excellent. "That is easily explained," replied Sir Henry, "when the argument is over Lord Justice —— tells him what to say, and you know that when Coleridge has once found out what he ought to say, no man living can say it better." One Long

Vacation I was riding near Ascot and stopped at an old-fashioned public-house to make an inquiry. In the porch sat two veterans sunning themselves and taking their modest glass of mild ale. According to my inveterate habit I got up a talk with them, and in the course of it they told me how they had done a lot of work on Lord Coleridge's house at Ottery St Mary. Then one of them said "You must understand that this was a time ago. He was not a lord then. He was only a duke (*i.e.* Sir John Duke Coleridge). They made a lord of him after that." When I got back on the 24th October to London I offered up this story on the altar of Lord Coleridge's contemplation, but he insisted that it was only one of my ingenious inventions. Indeed, you may pick up splendid pieces of information about lawyers in the country. One of my neighbours, a well-educated man, said to me, "Why do you trouble yourself to be in London in November? Surely the salary of £3000 a year which you receive as King's Counsel is enough without wanting to add much more to it."

The least competent judge before whom it has been my lot to practise was Sir James Fitzjames Stephen. Everyone recognises that with a pen in his hand he was admirable, but he was not in the least degree fit to be a judge. He had no practice at the Bar, and it is of course a dangerous experiment to put on the Bench a man who has not had a fair share of forensic experience. Perhaps, however, he would have done better if he had given to his work his undivided attention. No judge has a right to devote to the Bench a share only of his time and energy. The country has a claim not only to his best but to all his best. Sir James was a literary man by taste, by capacity, and by association, and as far as I could make out he rose early, knocked off some magazine work, and then did a most foolish thing, that is, he took a big walk. He arrived at court a tired man. And this sort of life told its own tale only too plainly during the later years of his judicial career. The impairment of nervous energy is just as fatal to the success of a judge as to the success of a race-horse. I always felt very sorry for Sir James, for we were

Bramwell then said, "I appeal to you as a family man to state whether you think that the lady was more likely to walk to church forty-eight hours before or forty-eight hours after the appearance of the heir. If you say the latter, I will leave this important issue to the Gentlemen of the Jury."

However, the learned judge said his best things when sitting in the Court of Appeal and hearing arguments on abstruse points of Equity. For example, "I do not know whether I have grasped the doctrines of Equity correctly in this matter, but if I have, they seem to me to be like many other good doctrines of Courts of Equity, the result of a disregard of general principles and general rules in order to do justice more or less fanciful in certain particular cases." Or this, "I agree that it is not necessary to reserve judgment in this matter, for I have listened attentively for two days to the learned and lucid arguments of the very eminent counsel without, unfortunately, being able to understand any of them, and I have just listened to most profound and luminous judgments of my learned brethren with still greater

attention, but I regret to say with no better result. I am, therefore, of the same opinion as they are and for the same reasons."

It was a sort of liberal education to spend a day in the Divisional Court taking the Crown paper, if Mr Justice Cave was sitting. The universality of his legal knowledge was unsurpassed in that sphere. Somehow or other he seemed to know all about rating, alehouses, poor law, irremovability and settlement, gas, drainage and police—that forest of legal business which is labyrinthine and tortuous, dark and repulsive. Now and then he made the profession laugh with some bizarre dogma. For example, when dealing with the law as to beer-drinking on Sunday, he spoke of a *bona-fide* thirst as the true test of a *bona-fide* traveller. Unfortunately, in his later years, he was inclined to somnolence in the afternoon, being rather too robust for a sedentary life. There is, however, one thing to be said, and that is that he did not often give way to this weakness, except when one of us was delivering an oration, and as he had got the evidence on his notes he did not want to hear our addresses. One of his

finest efforts was when the counsel for the plaintiff had called four witnesses without advancing the case at all. The learned judge said, "These are very bad witnesses, very bad indeed. Have you got a good one?" "Oh, yes, my lord," said the counsel. "Then call him at once," said the judge; "if you keep him any longer he will go bad like the rest." I shall never forget the trial by the judge of the case of the Attorney-General *v.* Wright. The fishery concerned had belonged to Lady Katherine Howard, and on her marriage to Henry VIII. the king took it and stuck to it, even after he had cut his wife's head off. Edward VI. inherited the fishery, but the Lord Chancellor, Baron Rich of Leeze, knowing that his master had a bad title to it, thought that there was no harm in stealing it. So he appropriated it, and passed it on to his descendants the Earls of Warwick. At the close of the eighteenth century it belonged to Lady Olivia Sparrow, and ultimately it was purchased by "General" Booth. After I had explained this history to the jury, and had proved the precise boundaries of the fishery

for a century, my opponent got up and proceeded to read half-a-dozen original deeds of the reign of Queen Elizabeth. This was too much for Mr Justice Cave. "Now," said his lordship, "the counsel for the owner of this fishery has proved a title of one hundred years. That is long enough for anyone. But you, his opponent, stand there and keep reading a lot of dusty, fusty old parchments of the reign of Elizabeth with what you say are different boundaries. You would uproot the title of every man in England if you had your way. I won't have it. There may be another world in which they will let you do it, but you shall not do it here." The learned judge always delighted in telling counsel that the points which they raised and the proofs which they tendered "had nothing whatever to do with the case," and therefore he was alike a terror to young men and a sore vexation to garrulous old men. Now and then he overdid it. There was a case before him about the liability of a lady who kept a big London dairy and who had a son who bought cows on his mother's credit, having

used the cash which his mother had entrusted to him for his own pleasures. At the close of the case the learned judge asked the counsel what questions they wanted to have put to the jury. One side wrote out five questions, the other side four. The judge read them and said, "They have none of them got anything to do with the case," and then he wrote out five new ones of his own invention. The case went to the Court of Appeal, and when we got there the Lord Chancellor said, "I have been trying in vain to find out what these five questions which were asked by the learned judge have to do with the case," and then there was a chorus, "My lord, we none of us know."

Just as the Long Vacation began the newspapers announced that Mr Justice Cave had resigned, and I wrote to him on the subject. His reply, which contained the words, "I intend to sit a bit longer," reached me but a few hours before the news of his death. So, also within a brief space of time, I had a note from my dear friend Mr Justice Denman, "The doctors tell me I am dying by inches or rather by ounces," and received the sad

news of his death. But I think that the loss I sustained by the premature removal of Lord Russell affected me most. These are the penalties of survival. Charles Russell had a hot and hasty temper, and he sometimes said things which he deeply regretted, but I can aver, and the memory of it is always sweet, that neither an angry look nor an angry thought ever passed between us. For me, at least, there was always the kindly smile, the bright eye, and the pleasant word. He once said to me, "How I envy you your phlegmatic Dutch disposition." I do not know that descent had anything to do with it, for my father was a most impetuous man. But this disposition has made me absolutely indifferent to betting and gambling in all forms, although some people have been kind enough to imagine the contrary. I was counsel in a case in the Court of Appeal in which their lordships deemed it important to understand how the business of a noted gambling-house in London was conducted. As soon as I got up Lord Esher said, "Now you know all about these things, tell us how it is done." I disclaimed the character of an expert, said

that I had never even seen the game of baccarat, and had never been in a gaming-house in London in my life. "Well I never," said Lord Justice Lopes, "I made sure that he would tell us all about it." And I verily believe that the general audience regarded me as a consummate hypocrite. I, on the contrary, felt vexed with myself for not knowing, for a common lawyer ought to make himself acquainted with all the follies of mankind as well as their virtues and vices. It was true that as editor of the *Law Journal Reports* I had corrected the judgment of Lord Justice Smith in Jenks *v.* Turpin, 53 *Law J. Rep.*, M. C., page 172, which as delivered and as printed in the *Law Reports*, 132, B. 8, page 529, contained an inaccurate description of the game of baccarat, but I got my information from one of the most notorious gamblers of the time, and not from experience. As regards betting I suppose that the Bar ought to be very much obliged to the ladies and gentlemen who have led a crusade against it, for our *Law Reports* teem with discussions more or less logical about it. Personally, I consider that backing horses is a waste of

time and energy, but where is the harm of it? The losses in betting incurred by mechanics, artisans and labourers, in town and country, are absurdly small compared with their useless and pernicious expenditure in drink. As for crime, every young rascal spoofs the magistrate with lamentations that he has been tempted into stealing through backing horses, because he knows perfectly well that he will get a short lecture instead of a long sentence, and half the bankrupts who prefer not to state the truth as to what has become of missing money tell the registrar that it has gone on the turf. In my early days there was plenty of big betting, and I was not brought up near Newmarket without knowing what was going on, but it was among very few people. Now betting is universal, but in small amounts. Education and the cheap Press, and nothing else, have brought this about. No part of the penny and halfpenny newspaper is better done than the *Sporting Intelligence*. It gives the past and the present and predicts the future. The descriptions of the horses, the races, the visitors, and the odds are all admirably set forth.

You get the pedigrees of the horses, the names and the characteristics of the jockeys, with appreciative notices of the owners and trainers. A race is the nearest approach to a battle in point of excitement, and the actors are elevated into heroes, just as they were in the days of Pindar. Therefore it captivates the imagination, and the reader is carried away by enthusiasm, aad so he works himself up to the exaltation of a prophet and backs his opinion. Fifty years ago it was *Bell's Life* at sixpence a week; now there is a host of daily papers with as much rivalry in talent as there is in speed on the course. On the other hand many of these same papers fan the flame of patriotism, and by their leading articles and their ample information make their readers feel that they have a country worthy of their devotion, and compel them to understand what are the political and social problems involved in its progress. The humbler classes of readers whose lives are dull find profit and pleasure in the study of these journals, and horse-racing forms for them a subject of interest and conversation, gives them something to puzzle over, and is

fine exercise for the memory. However, if Parliament thinks that betting is very awful and desires to try its hand at a little more empirical legislation, lawyers will not grumble, and I think that I may venture to say that there will not be one single bet less made in consequence.

I have already told one anecdote concerning the late Mr Justice Manisty, and I may venture on another. The learned judge, who was very thin and spare, was accustomed to take some few glasses of fine old port after dinner. Not being quite so well as usual and feeling rather weak, he consulted Sir Andrew Clarke. The famous physician played on his patient the time-honoured trick of asking what the patient ate and drank and advising something contradictory. "Sir Henry," said the doctor, "you must discontinue the port and try claret." The learned judge had no faith in this advice, because, being a man of wisdom and experience, he knew perfectly well that the wine of Portugal is very much better than the wine of Bordeaux. However, he had paid the fee and got the opinion and thought

that he ought to try the experiment. So for three weeks he substituted Chateau Margaux for the grand old wine which had ripened in his cellars. At the end of three weeks he again visited the medical adviser and explained that he had felt himself weaker each week, and that if he went on with the French stuff he would not be able to get down to the court at all. So Sir Andrew gave way and said that the patient must return to the port. "That is all very well," said Sir Henry, "but how about the arrears?"

Sir William Wightman held office in the old Court of Queen's Bench far beyond the prescribed time, and at last, on the eve of the Long Vacation, he took a sort of farewell of his brother judges. However, when "the morrow of All Souls" came round, he turned up smiling at Westminster Hall. "Why, brother Wightman," said Sir Alexander Cockburn, "you told us that you intended to send in your resignation to the Lord Chancellor before the end of August." "So I did," said Sir William, "but when I went home and told my wife she said,

'Why, William, what on earth do you think that we can do with you messing about the house all day?' so you see I was obliged to come down to court again."

Sir William was a most worthy man, but a very matter-of-fact person. When he was at the Junior Bar some politician, wishing to stir him up to fight a constituency, said to him, "Mr Wightman, are you a Whig or a Tory?" "Oh, I am a pleader," said the devotee of the fine art. But much may be forgiven to a man who drew pleas before the Common Law Procedure Act of 1852, and who knew the exact difference between a replication *de injuria* and a "conclusion to the country," who had a clear vision of "express colour," and who understood the meaning of *absque hoc*. I do not suppose that many students of the law read Stephen on Pleading. The volume is one of my treasured possessions, although I am bound to admit that there are passages in it even more obscure than Mr Joshua Williams's description of a "Common Recovery" or his explanation of the difference beween a "Contingent Remainder" and an "Executory

Interest" in his treatise on the Law of Real Property.

No Englishman ever doubts the integrity of the Bench, and every foreigner who is a resident in this country has a magnificent faith in our judges and juries. The cause lists prove this last assertion, for the names of the suitors betray the support derived by the Bar and solicitors from the controversies of the sojourners in our land. What would become of us if alien immigration were wholly stopped I really cannot conjecture. These foreigners are splendid litigants. They never grumble, are always most grateful to counsel for what is done on their behalf, and never dream of doubting the desire of the Court and Jury to do justice. I remember an application being made to one of my learned friends for a subscription to a fund for assisting the Jews to return to the Promised Land. "What," said he, "do you think is to become of my wife and my ten children if you take them all out of London?" But this lofty opinion of the honesty of our judges is certainly not shared by all foreigners of wealth, who happen to be

plaintiffs or defendants in some litigation in this country. Three or four years ago one of my learned friends was junior counsel for a small syndicate of foreign gentlemen. A consultation was held at his chambers, and to his amazement one of the syndicate asked him point blank what sum of money it was desirable to present to the judge who was about to try the case, and my friend had the greatest difficulty in persuading his client that such a thing was unknown in this country. But this was a trifle to my own experience. Many years ago a European sovereign, whose son now reigns in his stead, filed a bill in Equity, and the suit was in the Court of the late Vice-Chancellor, Sir Charles Hall. Some of the witnesses were ordered to be cross-examined before an examiner, and I attended as counsel for the king to re-examine. When the cause itself was ripe for hearing, the gentleman whom the king had sent over to watch his interests said to the solicitor, "My master is most anxious to win this case" — it was a matter of personal, not of national property—"and I intend to do so if possible. Now what shall

we give the judge? My master will not object to a large fee." I do not know what was the precise demeanour of the solicitor on hearing the suggestion, but when he told me the next day he was convulsed with laughter, as well he might be at the idea of calling at the Vice-Chancellor's hospitable house on Bayswater Hill on such an errand. However, he, of course, did his best to persuade the royal envoy that we did not do it that way here. The envoy was incredulous, and among other observations commented on the youthful innocence of the solicitor in comparison with his own experience of the world. The suit came to a hearing, and as soon as the counsel for the king had opened his case the judge said that it was pre-eminently a matter for friendly adjustment, and ordered the case to stand adjourned with a view to a compromise. The envoy came out of court triumphant, and said to the solicitor, "There, young man, what did I tell you. He would not decide the case, because he had not received his fee." In due course the case was again brought to a hearing, and the counsel proposed to put

in evidence a letter written in a foreign language. "Is there a sworn translation?" said the judge, and that formality not having been observed, the judge said, "This case must stand over for ten days." "Now," said the envoy to the solicitor, "do you believe me or not? Twice has this case been put off on mere excuses, and the reason is manifest. The time has arrived to take definite action." How the solicitor managed to prevent the envoy attending upon the judge with the cash I do not know. But what I do regret is that I never got a chance to tell the Vice-Chancellor the story, which I am sure would have afforded him much amusement. The original idea in days gone by was that a judge should receive his fees as an arbitrator does, in other words, that the litigant should pay for justice, and then came the notion of one party being more generous than the other. I was once dining with a rich merchant who had a business in one of the old Spanish colonies, and I asked him how he got on as regarded justice. "Oh," said he, "I keep a judge. I find it so convenient when I want an injunction."

For obvious reasons I have abstained from speaking of judges that are happily still with us, but I must make an exception in a case in which the credit of a really good thing is often diverted from its real author. Twenty years ago there was an action of Knight *v.* Clarke which is reported in the fifteenth volume of the *Law Reports*, Queen's Bench Division. I was one of the counsel for the plaintiff. The late Speaker of the House of Commons and Mr Justice Bray were counsel for the defendant. The defendant held under a lease dated the 10th January 1810. At that date the land of which the plaintiff desired to recover possession was a grass field which long before the time of the action had been converted into Calvert Street, Mile End. The difficulty of identifying the parcels in old deeds with the warehouses and shops of modern London is often very great, and in this action would have been attended with much expense. However, at an early stage of the proceedings the defendant made an affidavit, which began by stating that he was in possession under the lease of 1810 of the premises sought to be recovered in the

action. The trial came on before Mr Justice Mathew, afterwards Lord Justice, and counsel for the plaintiff put this affidavit in evidence. At the close of the case for the plaintiff, counsel for the defendant objected among other things that no evidence of identification of the land has been offered. Thereupon the learned judge read out the first paragraph of the document relied on by the plaintiff, and said, "Truth will leak out, even in an affidavit." I have so often heard this story told of other judges under all sorts of fantastic circumstances, that I feel justified in placing the real truth on record.

Since the Judicature Acts were passed and the Circuit system modified, and the attention of one judge in London secured during the Long Vacation, the position of the Bench in reference to sittings and vacations has been more or less affected, and the discussions as to reform in these matters have been frequent. Sufficient weight has not been attached to the practical opinions of the Incorporated Law Society on the subject. So far as concerns the Bench, thirteen weeks out of fifty-two might fairly be regarded as holiday

enough. To work three quarters of the year and rest one quarter would appear to be a just arrangement, as between the Bench and the suitors. If this were the principle to be adopted, the adjustment of times would become a mere detail, but if the Christmas and Easter Vacation remained as they now are, and the Long Vacation began on the first of August and ended on the thirtieth day of September, and the Whitsuntide Vacation were abolished, the suggested time would be secured for business with reasonable regard to the health and comfort of the judges. In one of his speeches Mr Choate explained to us that in New York there were practically no judicial holidays except the Long Vacation, "but," said he, "in this country, when you have done eight or nine weeks' work, you are all tired out and want a recess." As regards the date of the commencement of the Long Vacation, it is absurd for the Courts to expect jurymen and witnesses to stop in London after the first day of August, so long as it is the universal custom of Londoners of all classes to leave the metropolis on that

day. Indeed the twelve days are to a large degree frittered away, as the jury cases are not then taken. The only reason why the vacation does not begin on the first day of August is that so many notable lawyers must remain in town until parliament is prorogued, so that such a change would be to them very inconvenient. But, after all, the Bench and the Bar exist for the public, although experience rather suggests the opposite doctrine. In these days, when there is an idolatry of idleness abroad among the people, and football, cricket, lawn tennis and bridge come first, and business a poor second, it would be well for the Bench and the Bar to set a good example.

In England it is difficult to keep separate the idea of trial by jury from the considerations which attach to judicial functions. Aristotle in his *Rhetoric* explains that the jury, which at Athens was multitudinous, "looking to their own gratifications and listening with a view to amusement, surrender themselves up to the pleaders, and, strictly speaking, do not fulfil the character of judges."

This mental attitude in the Athenian "Dikastæ" accounts for the Demosthenic style of oratory, of which in England we have fortunately now no examples. I suppose that Henry Brougham was the only man of modern time who addressed juries after that fashion, and he was probably the most unsuccessful advocate of the last hundred years. Those of us who are alive seven years hence may celebrate the seven hundred and fiftieth anniversary of trial of civil causes by jury as established by the Great Assize, A.D. 1162, in the reign of Henry the Second, and four years later the criminal lawyers may celebrate the like anniversary of the institution of "Grand Juries" by the Assize of Clarendon, A.D. 1166. It is impossible to believe that trial by jury in civil causes would have endured through all the political and social changes and chances of these long years if our juries had at all resembled those of Athens, and if experience had not demonstrated that counsel must appeal to their reason and not to their passion. The system of collecting a dozen men, strangers as a rule to each other, and

of divers occupations, and getting from them decisions for a day or a week, and then sending them back to their ordinary life has its enemies, but it can afford to laugh at them with a record like this at its command. In our time we have never had a judge with a larger measure of sound, solid common sense than the late Sir Archibald Smith. When he had been five years on the Bench he told me that day by day his opinion of juries grew higher. "Sometimes," he said, "I think the verdict is wrong and I feel disappointed with it, but I think the case over and I find on reflection that the jury were quite right."

The system, however, like the constitution, is a more or less delicate piece of machinery, and there is one thing that will throw it out of gear, and that is, bad management on the part of the person who has to guide it. A judge, of course, ought not to be a mere figure-head. He must have a mind of his own, but then he ought to respect the mind of the jury. I have heard more than one judge boast that he has not lost a verdict during an assize or a sitting, which, of course, meant

that he had perverted the mind of the jury so as to make it subservient to his mind, which is exactly what he ought not to do. I have also seen a judge at an early stage of a trial deliberately set to work to ridicule the case of the plaintiff or the defendant, to magnify the evidence on the one side and to belittle the evidence on the other side, with the result that the machinery cannot do its work properly, and that the verdict is either given in favour of the judge's leaning or against it, not in the least because it is the result of the evidence in the opinion of the jury, but because they have either blindly submitted to the judge or blindly rebelled against his dictation. But where the judge deals fairly with the jury, assisting but not controlling, influencing but not dictating, putting the issue plainly before them, and clothing what he has to say about the law in plain language, the twelve men will very rarely make a mistake, and neither side will trouble the Court of Appeal by a vain effort to upset the verdict.

CHAPTER IV

AMERICA

By chance, which rules our lives more than design, I became in my student days acquainted with Henry Hotze. He was by origin Swiss. His great-uncle was the famous General Hotze, who was killed by Soult's men while holding the line of the Linth River in support of the Russian army against Massena on the 26th September 1799. My friend's father was Captain of the Swiss Guard of Charles X., and in the Revolution of 1830, when the elder line of the Bourbons was finally expelled from France, that gallant officer vainly implored the king to be allowed to fire on the mob. Henry Hotze at the age of sixteen years left his home in Zurich for New Orleans, and some few years later he lived in Mobile, where he edited *The Mobile Register*, a journal of great influence in the Southern States. During the

contest for the succession to the presidency of Buchanan, he supported Stephen A. Douglas, but after the rupture between the North and the South he went heart and soul for the Confederacy, and joined General Lee's army as a private soldier. Mr Jefferson Davis took him from the ranks and sent him on secret service to Europe. Hotze made his way to the extreme western line of the northern army, reached Canada, and came on to London. Having fulfilled his mission he boldly took the steamer from Liverpool to New York, made his way south, crossed the Potomac River, and getting through the northern lines arrived safely at Richmond.

The captain of the steamer on the Potomac was an ardent Southerner, and suspecting that Hotze was a spy and fearing that he might be detected, the captain walked up and down the deck, uttering the most fearful imprecations on Jefferson Davis and all his fellows, and vowing that if he ever caught one of the rebels on his vessel he would hang him out of hand. This demonstration so satisfied the Federal police that they made no effort to search the steamer,

but Hotze was thoroughly alarmed, and hid himself in the innermost recesses of the ladies' cabin, as he had not given the captain credit for so much diplomacy.

When Hotze was called upon to make a second venture he ran the blockade to Nassau. Having once more arrived in London he took rooms at 17 Savile Row, which thenceforward became headquarters for the Confederates in England. Thither came ordnance officers, merchant refugees, purchasers of ships and stores, managers of the Confederate loan, and in later times, after the fall of Richmond in April 1865, war-worn soldiers and politicians. All these men I knew intimately, and fine fellows they were.

It would have been impossible to find a man better fitted than Hotze for these secret missions. In stature and face he was not at all remarkable; he had not a single American characteristic, and he had no sort of trans-Atlantic accent. During the war he published a weekly newspaper called *The Index*, which at his request I edited for some months. The historian of the war may find in it

materials not readily to be obtained elsewhere. It was largely supported by the purse of a very patriotic and worthy gentleman, Mr Henry O. Brewer of New York and Mobile, but its mission came to an end with the fall of Richmond. The most ardent and consistent supporter of the Confederate cause in London was *The Standard* newspaper, but apart altogether from questions of public policy, the editor, who had from the first maintained the right of the Southern States to secede and to establish an independent Government, was bound to Hotze and the cause by other and less lofty considerations. He and Hotze were on the most friendly terms. Indeed he was a man of very attractive manner, appearance, and disposition, one of those whom you might wish to rebuke, but whom you could hardly refuse to help. He did rather a big speculation on the Stock Exchange, imagining no doubt that his intimate knowledge of public affairs enabled him to prophesy the jump of the market. The event, of course, proved him to be quite wrong, and the broker sent in an account showing a very big loss on

differences, which the editor, who was always as impecunious as Edgar Poe, was wholly unable to meet. Thereupon he applied to Hotze to help him out of the difficulty. Hotze was moved by three considerations: first, by a genuine regard for his friend; second, by the thought that, if the editor was made bankrupt and had to resign his office, the Southern cause would lose its most strenuous supporter in the London Press; third, that here was an opportunity of binding the editor by golden ties to the cause. So the debt was paid with the public money of the Confederacy, and whatever might have been said or thought of the propriety of the transaction if Hotze had ever rendered his account to his own Government, no one would have questioned the policy of the thing. The editor was a very lucky man, for not long afterwards Mr Colin M'Rae arrived in London to take charge of the Southern Finance, and the editor would have fared badly at his hands.

The *Evening Standard* in the year 1865 had one notable day in its history, for on the 16th April 1865, when it published the news of

the assassination of Mr Lincoln, no less than 100,000 copies of the paper were sold. Mr Johnstone, the proprietor, would have had a short answer ready for anyone who had then proposed to him an amalgamation with any rival newspaper.

Some time after the war Hotze went to Bucharest. A Roumanian trader had come over to England and paid a visit to the chief partner in a firm in East Anglia, and had persuaded his host to sell him on credit £10,000 worth of agricultural implements. The goods were duly sent to Bucharest and sold at a large profit by the buyer there, but the latter had omitted to pay over the money to the firm. Hotze at my suggestion went out on behalf of the English firm to try his hand at getting the money.

While he was there Prince Couza was pulled out of bed by a band of patriots and kicked out of the country, as he richly deserved. The Roumanians thereupon were in want of a prince to rule over them. This state of affairs was a joy to Hotze, who at once set to work to put the second son of Anthony, Prince of Hohenzollern-Sigmaringen

in Couza's place. Events have proved the wisdom of this plot, for on the Continent there has not been a more honest, or a more sage monarch than the ruler of the proud Boyards, and of "the white-clad peasantry, frugal, grave, and endowed with weird powers of untaught eloquence and poetry." Hotze took infinite pains about the details, and even prepared the time-table for the journey of the prince from his father's palace to Bucharest. The prince had to cross Austria in disguise, because the Austrian Government was strongly opposed to his election. Nevertheless Hotze, like a born conspirator, kept himself in the background, and let other people strut on the stage at his prompting. He had an intense admiration for the father of the new prince of Roumania, and for the political wisdom displayed by that representative of the elder branch of the famous house of Hohenzollern, and he often used to explain how, before Sadowa, when Bismarck had to struggle with the Prussian Parliament, the Prince of Hohenzollern placed at the disposition of King William the whole of his enormous wealth, so long as the Parliament

hesitated to furnish the money demanded by Bismarck.

Some years later Hotze lived in Paris, and when the Comte de Chambord came forward to claim the throne of his ancestors, Hotze worked might and main for the Royalists, spending his time and his money lavishly in the cause. The rejection by the Bourbon of the Tricolour destroyed Hotze's brightest hopes, and he ultimately retired with loss of health and property to a village in Switzerland, where he died. My connection with him did not even then come to an end. Not long before his death an advertisement appeared in the "agony column" of *The Times* for information as to his place of abode. I answered it, and from this simple circumstance I became acquainted with Dr Ranger, and was retained by him in many actions for General Booth and the Salvation Army.

Mr M'Rae, whom I have already mentioned and whom I knew intimately, was a citizen of Mississippi, but carried on business in New Orleans. He was very proud of his race, being of pure Celtic descent on both sides. His mother had

enormous influence in that State, and was supposed to control the return of the two senators, of whom Mr Jefferson Davis was one, to Congress before the war. She was a devout Presbyterian, but her son was somewhat lax as concerned the "kirk." He attended his mother to the Presbyterian Church in New Orleans, and thus held converse with her. I give his own words: "Madam," I asked, "are these men whom I see seated in the high places the elders of the church?" and she said, "My son, they are." I said, "Madam, I suppose they are all holy men?" She said, "My son, they are." I said, "Madam, they may be, but there is not one of them who could get his Bill of Exchange discounted in New Orleans."

Mr M'Rae came over to take charge of the business of the Confederate loan of £3,000,000 sterling, which had been negotiated in March 1863, through Baron Emile Erlanger of the Rue Chassee d'Antin, a gentleman of the highest ability, who is still happily among us. The South made the absurd blunder of borrowing only £3,000,000, when they might have obtained £10,000,000,

as the loan was subscribed three or four times over by the public. Mr M'Rae was a great student of history, ancient and modern. He regarded the Roman republic as the true model of a state. "Sir," said he to me, "in the time of Augustus Cæsar there lived a learned gentleman of high rank, Titus Livius. He was the friend of the Emperor, and he had access to all the archives of Rome. He wrote a most beautiful history, which was accepted by his countrymen as a noble record of the mighty deeds of their forefathers. I have read that work, and I know that you have. Well, sir, eighteen hundred years afterwards there arose a confounded German, a fellow called Niebuhr, and he said 'The books of Titus Livius are all lies. I will write a true history of Rome,' and then he proceeded to say that the seven kings of Rome, although Virgil and Horace wrote of them, never lived at all, that my ancestors under their Fremines, that is their king, whom Livius calls Brennus, and whom your Eton masters thought bore that name, never sacked the city, and to write out a lot of stuff, destitute alike of heroism and of truth. Sir,

I prefer Titus Livius to Niebuhr or any other German." Mr M'Rae was a worshipper of Napoleon, whose history he knew thoroughly, and whose proclamations to his army he would declaim magnificently. He had a secretary, Mr Charles Walshe, whom he constantly upbraided for his ignorance of the doings and sayings of Buonaparte. He was also an admirer of the Red Indian, having arranged on behalf of the Government for the removal of a tribe beyond the Mississippi River, and he regarded the race as on an equality with the white man, upholding their right to possess slaves, a right fully recognised in the South. In appearance he bore a most striking resemblance to the Count Bathyany, who was shot by the Austrians in 1848 for upholding the liberties of his fatherland.

One summer Mr M'Rae was not in very good health ; so he took a small furnished house near Lord's Cricket Ground for a few months, having faith in the salubrity of the air of that district. His friends used to go up at eventide to visit him, and occasionally there was a mild game of poker before we

walked back into London in the summer night. Some neighbour went to Scotland Yard and informed the police that the modest house in which we so came together was the headquarters of a dangerous band of Fenian conspirators, and therefore detectives were set to watch our movements, and clever men visited the house and cross-examined the servants. The thing became such a nuisance that I wrote to the Chief Inspector at Scotland Yard and explained who these gentlemen were, and that so far from being Fenians they were the enemies of all such persons, and I added that it was a pity that the police, who really had in their hands some heavy work with the Fenians, should be put on a false scent. The next day I had a call from one of the principal detectives, and for some time he doubted my assurances, thinking, I suppose, that I was playing a game of "bluff" with him. However, he was convinced at last and we parted on excellent terms, and there was no more "shadowing" in that direction.

I met Mr Mason and Mr Macfarlane soon after their arrival in England. These two

gentlemen, with Mr Slidell and Mr Eustis, had run the blockade to Nassau, and there they had gone on board the Royal Mail steamer, the *Trent*, bound for Liverpool. Captain Wilkes of the *San Jacinto* had stopped the mail steamer on the high seas, had seized these gentlemen and had carried them as prisoners as far as Boston on the 19th November 1861. Lord Palmerston demanded their immediate release, to which the Government at Washington had consented, and they were released on the 1st January 1862 and brought on a British man-of-war to England. Mr Mason was accredited as envoy to our court, with Mr Macfarlane as his secretary, and Mr Slidell to the court of the Tuileries with Mr Eustis as his secretary.

Mr Mason was a tall, fine-looking man, with the style rather of an owner of broad acres than of a lawyer or a diplomatist. Mr Macfarlane was a nephew of General Wingfield Scott, and had been in England some years before, on a mission to present a sword from the conqueror of Mexico in the campaign of 1847 to the hero of the

Peninsula and of Waterloo. On his final departure from England Mr Macfarlane presented me with the table on which all Mr Mason's dispatches were written, and it is in daily use in my chambers in the Temple to this day.

Mr Slidell and Mr Eustis were men of Latin blood, of refined manners, and of the type of courtiers of an ancient monarchy. It was, however, possible to discover that Mr Slidell was an American on a first encounter, whereas Mr Eustis would have passed as an Englishman accustomed to live in Rome or Paris. Indeed, he was much more at home in those cities than he was in London. He was a delightful companion, and we spent pleasant days together in London and in Paris. I shall never forget the just reverence with which the manager of Philippe's then famous restaurant regarded him, and he deserved it. Mr Eustis and Mr M'Rae were my guests at King's College, Cambridge, on the memorable occasion of the first visit of the Prince and Princess of Wales to Cambridge after their marriage.

Among other visitors to 17 Savile Row was

Captain Bullock, who fitted out the famous cruiser, the *Alabama*, and was gifted beyond all men with the power of holding his tongue and guarding his secrets. I also knew Mr Williams, who before the war had been one of the senators from Tennessee and had served as United States Minister to the Ottoman Porte. Mr Williams was the best poker player whom I had ever encountered. His lace shirt-front, gorgeous waistcoat of many colours, and imperturbable countenance will never fade from memory. He must have been more than a match for the Sultan and his ministers.

By constant association with these Confederates the rights and the wrongs of that awful quarrel between North and South became very familiar to me. Looking back one can see what a gigantic political blunder the South made in her attempt to break up the union. On the other hand, the deplorable condition, even at this distance of time, of many of the States as concerns the mutual relations of the white and black races condemns the proclamation issued by Mr Lincoln on the 22nd September 1862, which

set the slaves free off-hand without adequate preparation by wise education and just laws. I do not think that the people of England ever quite understood the attitude of the South towards slavery. In this country we regarded it as a property question. That was a mistake. A negro in his prime cost a thousand dollars. It would have been as cheap to pay him wages. The South knew that it was a political and social not an economical question. Their creed was to have a class without civil or political rights, devoted to labour, and there was the negro ready to hand. The white community constituted the governing class, all white men being deemed equal. Socially there was to be a defined line of demarcation across which no trespassers were to be permitted. If this creed had not been outraged, and proper compensation had been provided as in the case of our West India plantations, the South would never have raised its hand against the North. It is, however, a great consolation to know that, after forty years of adversity, the South is now making economic progress undreamed of before the

war, and that there has been complete reconciliation between the two sections. The Southern idea did not really differ from the condition of Poland at the time when the feudal system prevailed in Western Europe. "All the Polish nobles," writes Hallam, "were equal in rights and were independent of each other; all who were less than noble were in servitude." And Aristotle wrote, "It is evident that in a State in which a perfect polity prevails, and in which the citizens are just men, in an absolute sense, the citizens ought not to lead a mechanical life, for such a life is ignoble and opposed to virtue."

After the fall of Richmond, General Wirt Adams, General Dick Taylor, and many other notable men came to England, and I knew them well. General Dick Taylor, who was the son of President Zachary Taylor, continued the war until the 4th May 1865, five weeks after the surrender of General Lee. He was a visitor at Sandringham, and in the evening the Princess of Wales, now the Queen, asked him to join in a rubber of whist with the King of Denmark. I never knew a Southerner who

was not ready for cards at any moment, and who was not a high-class player. Naturally the general won from the king, and on receipt of the money the general said, "This is the first instalment of the repayment of the Sound Dues, which Denmark has unjustly levied on the United States since the treaty of Vienna." General Wirt Adams was a man of gigantic stature, and it was capital fun to walk along Piccadilly with him. It is said that he fought in more battles than any general in the Southern army, but his appearance, apart from his prowess, was bound to win many looks of admiration.

Mr Jefferson Davis came to England after his release from prison, and some time before the Attorney-General of the United States had entered a *nolle prosequi*, dated 6th February 1869, in his prosecution. Mr Davis was a delightful man of the most simple manners, and it is worthy of remark that, like Mr Eustis, he spoke with an English accent. He and Mr Benjamin went with me one summer day to Eton College where we had lunch with Provost

Goodford, and after a look at Windsor Castle drove to the river-side inn, the Bells of Ouseley, to tea. Mr Davis walked about the old-fashioned room adorned with prints of race-horses and coaches. No man could be more delighted. "I have read," said he, "heard and dreamed of such a room in such an inn in England, but never hoped to visit one," and I am sure that he enjoyed the tea and bread and butter and boiled eggs more than any dinner ever set before him. "Now," said Mr Benjamin, "this is the first time he has laughed since the fall of Fort Sumter." If any American will visit the College Library at Eton he will find the signatures of Mr Davis and Mr Benjamin in the Visitors' Book, and I am proud to think that my signature is bracketed with them. We also visited the Island of Runymede, where King John signed Magna Charta. We were all affected by the *genius loci*, and Mr Davis lingered on the island, recalling that here the barons had won these liberties which are the rich inheritance of our race.

What shall I say concerning my lamented

friend Mr Benjamin? I was the first Englishman to shake hands with him on his arrival at 17 Savile Row after his extraordinary escape from Richmond. We were on terms of friendship from that hour until his death, and he did me the honour of appointing me his executor. What the Profession, which received him from the first with cordiality, thought of him was proved by the affectionate farewell accorded to him. We dined in the Inner Temple Hall with the late Lord Chancellor, Lord Halsbury, in the chair, Mr Benjamin, our honoured guest, being seated at his right hand. There were manifest traces of the accident which had compelled Mr Benjamin to retire from practice, but the hidden fire burst into flame once more when he rose to thank us. On the one hand we had recognised in the course of his short but brilliant career his talent, his urbanity, his sterling integrity; and on the other hand he recognised that he had come among us a stranger and an exile, and that we had never hesitated to welcome him with that liberality of feeling for which the Profession has always been celebrated, for with

us birth, rank, nationality are nothing; talent, learning, honour, good faith and good manners are what we require; and he who possesses these commands alike our respect and our regard. Mr Benjamin was a philosopher, and it was quite impossible to upset his equanimity. In his mode of life he was temperate and regular, yet as host or guest he knew how to enjoy the good things of life. He never allowed private affairs to interfere in the least degree with his professional work. "No lawyer," he would say, "or medical man should ever do any work outside his profession, or ever make an investment which can give him a moment's uneasiness. Give your banker a list of safe securities, and when you have spare money let him buy from the list. Bring to bear upon your legal work a mind absolutely free from worry and anxiety. Clients have a right to your best, and you cannot give them that if you have anything to think about other than their interests." He held that the pride of good advocacy, the anxiety to do the utmost for the cause of the client, the maintenance of popular faith in the devotion

of counsel were the real objects for which the Bar ought to strive, and he acted upon these principles.

Of course every Englishman grumbles at the weather, but no one was permitted to indulge in that national privilege in the presence of Mr Benjamin without rebuke. "Why do you find fault?" he used to say; "you never get a day on which you are prevented by the weather from pursuing your ordinary business or calling. If you had lived where the cold is intense, or the heat unbearable, you would understand what I mean, and if you had ever experienced months of continued fine weather, and the weariness of it, you would not grumble at the changes to which this island is subject." He also was highly amused at the behaviour of Englishmen at railway stations. "If a man has to wait half an hour at a station, or if the train is five minutes late, how he frets and fumes and worries, and yet I see the same man wasting his time hour after hour with absolute serenity." Sir Frank Lockwood told me a story which well illustrated Mr Benjamin's knowledge of human nature.

Nothing wins a man's heart so readily as the art of being a good listener. For my part I am sure that at a consultation it is better, if you can only get the chance, to hear than to talk. The lay client likes to tell his tale, and if you attend to what he says, and put in here and there a word of sympathy, he goes away with a higher opinion of you than if you give him the benefit of your own view on the most abstruse legal proposition. But here is Sir Frank Lockwood's story as he told it to me : " I have a relative who wanted to take counsel's opinion on a matter of family property. So we fixed up a consultation with Benjamin, and my relative came two hundred miles to attend it. As soon as we were seated he said to Benjamin, 'It seems to me, sir, essential that you should clearly understand the exact position of the family in this matter,' and away he went and gave Benjamin an explanation which lasted twenty minutes. Benjamin sat mute and smiling all the time. Then in came the clerk and said, 'The parties are ready, sir, in the next consultation;' and Benjamin rose, shook hands with us all, and the clerk

bowed us out. When we got outside my relative said, 'What an agreeable, courteous, delightful man Mr Benjamin is.' 'Yes, said I, 'but you do not seem to have got much advice out of him.' 'No,' said he, 'now you come to mention it I do not know that I have.'"

The ability of Mr Benjamin as an advocate was patent to all lawyers, and I remember the late Mr Justice Denman saying to me, "What a lot of law he taught us." But he had another virtue not known to the world at large, but to which I can speak, namely, his generosity to all those of his countrymen who sought his aid. Mr Benjamin was much impressed with the moderation of fees paid to counsel in this country as compared with those paid in America. But a man who has received a fee of £10,000 may be forgiven for such comparisons. Mr Benjamin entered Lincoln's Inn as a student on the 13th January 1866, and these are the words of the register of admission: "Judah Philip Benjamin of London (54), first son of Philip Benjamin, late of State South Carolina, America, merchant, deceased." Mr Benjamin

was born in the West Indies. His father had migrated from England, and the ship put in at an island then in the occupation of and under the dominion of Great Britain, so that he claimed to have been born a subject of King George the Third, in the year of the retreat from Moscow. The *New York Herald* said that he was descended from Judas Maccabæus, who defied Rome as he did Washington. For about half a century he was a citizen of the United States, and was offered a seat in the Supreme Court by President Filmore. For about four years he was a citizen of the Confederate States. He was called to the Bar by a special resolution of the Bench of Lincoln's Inn in June 1866, after five months of studentship instead of three years, and he may fairly be regarded as an Englishman from 1866 to 1883. But from the latter year until his death on the 6th May 1884, his domicile was in France. In his will, bearing date the 30th April 1883, were these words: "I have no real estate in England, but I have in France the family mansion or hotel at No. 41 Avenue d'Jena, Paris, in which I have

resided since my withdrawal from the Bar, and in which I contemplate residing the rest of my life." His will was admitted to Probate on the 28th June 1884, and the authorities at Somerset House, without hesitation, recognised that the domicile of the testator was French, and that no legacy duty was payable to the Crown on his personal estate. Any other testator would have declared his domicile in terms, and so have raised a doubt and a contest, but he more wisely declared the facts, leaving the inference to be drawn. In 1872, after six years spent at the Junior Bar, Mr Benjamin applied to the Lord Chancellor for promotion to the rank of Queen's Counsel. Lord Chelmsford, while quite admitting that the applicant was fully entitled to that rank, expressed his anxiety not to give cause of offence to the Government of the United States. Mr Benjamin was equal to the occasion ; he got himself appointed Queen's Counsel of the Court of the County Palatine of Lancaster, and then persuaded the Lord Chancellor to grant him a Patent of Precedence under the Great Seal in the

Courts of Westminster. In these happier days we can hardly realise the possibility of the Government of the United States taking umbrage at honour being paid to an American citizen; but hearts were sorely tried between the years 1860 and 1879. Now our only strife is to rival each other in friendship and hospitality. We all rejoice and are proud when Mr Choate honours us by becoming a Bencher of the Middle Temple, when he consents to be the guest of the Bench and Bar, when he addresses us in a farewell speech, the most eloquent and the most impressive which I have ever heard or am ever likely to hear, and when he tells us that the name of my lifelong friend, Lord Alverstone, the Lord Chief Justice of England, has become a household word throughout America. It is the crowning glory of Mr Choate's brilliant career that he has done more than any living man to make both countries forget all that was unhappy in the past and to bring them nearer to each other, and I think that we in England have also a right to be proud of what our Chief Justice did in the matter of the Alaska

Boundary. I would quote the words of President Grant who, on the 2nd December 1872, declared that the result of the *Alabama* arbitration left the United States and Great Britain "without a shadow upon their friendly relations," and apply them with increased force to the decision of Lord Alverstone.

Mr Wigfall, whom I met on two occasions only in London, presented a violent contrast to Mr Benjamin. No one could imagine Mr Wigfall giving dinners to bring political opponents together and soften the asperities of public life as Mr Benjamin did when he sat in the Senate at Washington in the days before the war. Mr Benjamin told me that Mr Andrew Johnson received one of these invitations, never answered the letter, and on being reminded of it some days later said "Yes, I had the letter, but I have not thought about it yet." The Southerners who were in London fought rather shy of Mr Wigfall. That gentleman was brought up in South Carolina, but he did something which, even in the worst days of duelling, was deemed a gross outrage, and he found it desirable to migrate to Texas. He sat in the Senate at

Washington before the war for that State. There were nights on which he saw the ghost of the judge with whom he had the difficulty in Carolina, but I was fortunate not to be present at these painful scenes. One of his speeches deserves to be recorded as a splendid specimen of invective, and we know on the authority of Mr Disraeli that invective is "the ornament of debate." A politician during the war, in an impassioned address, had declared that he would fight the North to the last, and that if defeated he would never surrender, but go away and live with the Red Indian. Thereupon Mr Wigfall, who detested the orator, rose and said, "I love the Red Indian. He is my friend. We white men have sent smallpox to decimate him, whisky to ruin his body and soul, gunpowder to enable him to kill his brother, but we have not yet sent him this man, and in the name of the Eternal One I protest against this further infliction upon the wretched Red Indian." This style of oratory appeared in a speech of another Southern politician, who on being asked to vote for a candidate exclaimed, "What! vote for

Herschell *v.* Johnson of Georgia? No, sir, I'd see him so far into h—— that the Almighty Himself with one of Lord Ross's telescopes would not find him in a thousand years."

Among the notable persons whom I knew in those days was Mr Martini, the inventor of the breech action of the rifle adopted by our army, who regarded himself as a benefactor of the human race, because in his opinion such inventions tended to the abolition of war. Mr Martini was a mechanical engineer at Winterthur in Switzerland. I also knew Nubar Pasha when he came to England to forward his scheme of abolishing the consular jurisdiction under the capitulations in Egypt and of establishing the mixed tribunals. He had spent some time in Paris and had secured the assent of M. Drouyn de Lhuys, then Minister of Foreign Affairs to the Emperor Louis Napoleon. For the purpose of making his case clear to the Continental powers he had written in French a very able note to the viceroy on the subject. I translated this note and went over the translation with him. Then we

had it printed, together with a report of Monsieur P. Manoury of the Bar of Paris, and distributed the pamphlet among the members of both Houses of Parliament. The *Times* and *Standard* did their best to help us by excellent leading articles. The late Lord Derby, who was then Secretary of State for Foreign Affairs, was entirely in favour of the scheme, but rather resented having his hand forced in this way. On a later occasion Nubar Pasha came to England with the Khedive of that day, and they stayed at Buckingham Palace. I called at the palace and asked the attendant to take up my card. The gentleman was full of pomposity and said, "I do not think that his excellency can see you." However, I was shown in at once and spent a long morning with Nubar. He would not let me go, because, so far as I could make out, I was the only caller who did not want to get something out of him, or out of the Khedive—and he told me that it was the only rest he had had since his arrival in London, for he was besieged from morning to night by jewellers, who had diamonds to sell to the viceroy, people who

wanted concessions or favours, and other importunate beggars. Every time the door opened he said, "I am engaged and cannot possibly see anyone." However, I took my leave at the end of two or three hours, and as I went down the staircase and through the hall of the palace, a line of officials and servants bowed down before me in the most extravagant manner, while the gentlemen from Bond Street and the city cursed me in their hearts. I never saw Nubar Pasha again. He was a man of grand appearance and manner, of immense ability and master of many languages. I laughed heartily to myself, for all these people imagined that Nubar and I had been discussing the affairs of Egypt and of Europe, whereas our talk had been of the most frivolous character.

Many years later I had a similar experience. I went to a consultation with Charles Russell, and we very quickly got rid of the solicitor and the client. Then Russell began to enjoy himself over a discussion on the chances of the horses in the coming races at Epsom. When at the end of a quarter of an hour I went downstairs the solicitor

seized me. "Now do tell us what Sir Charles really thinks of our case." "Good Heavens!" said I, "you don't suppose that we have nothing better to talk about than this miserable case? Why, we have settled which horse will win the City and Suburban Handicap."

One of the most important law-suits arising out of the Civil War was that known as the *Alexandra* case. On the 5th April 1863 the steamship *Alexandra* was seized at Liverpool by our Government, on the ground that she was intended for the service of the Confederate States, and was therefore forfeited to the Crown under the 7th section of the Foreign Enlistment Act, 59 Geo. III., c. 69. On the 25th May 1863 the Attorney-General filed an information charging that "Mr Sillem, Mr C. A. Prioleau, Mr J. Bullock and others did equip the ship for the service of the Confederate States." The cause was tried before Chief-Baron Pollock and a special jury. His lordship told the jury in substance that if the object was to equip, fit out, or arm the vessel in Liverpool, they were to find a

verdict for the Crown, but if the object was to build a ship under a contract, leaving it to the buyers to do what they pleased with it, they should find a verdict for the defendants. In November four judges of the Court of Exchequer sat to determine whether this view of the law was right. Sir Hugh Cairns on behalf of the defendants delivered an argument which lasted nine hours and a half, and the speech of Sir Roundell Palmer on the side of the Crown took up rather more time. Both were models of style and reasoning, and in the result two judges held one way and two the other, so that the verdict stood. Then the Crown appealed to the Court of the Exchequer Chamber, whereupon the counsel for the defendants objected to the jurisdiction of the Court, contending that no such appeal could be brought. Four judges decided that there was no appeal, three dissenting. The Crown then appealed to the House of Lords, and in April 1864 the then Lord Chancellor and four other lords held that there was no appeal, while two noble and learned lords thought that there was an appeal. So the

defendants won the fight, and the Crown wisely bought the ship from the defendants as the simplest method of preserving the neutrality of Great Britain.

Mrs Greenhow sat in court throughout the argument in the Court of Exchequer. I took her to the court and got a place for her where she could see and hear with comfort. She had taken a very prominent part in the War of Secession, and was supposed to be in the confidence of Mr Jefferson Davis. She had been arrested as a spy in the Federal States and imprisoned for some time at Washington. On her release she came to England. In October 1864 she determined to go back to Richmond, and sailed in the *Condor* to run the blockade. The ship got aground off Wilmington, and Mrs Greenhow, fearing capture by a Northern cruiser and a second imprisonment, attempted to get into a boat which the crew had launched. Unfortunately the boat was swamped and the poor lady was drowned. Perhaps she would have been saved, but she carried a large amount of gold round her waist, which prevented her from rising readily

to the surface. Her body was recovered, and she was accorded a splendid funeral. The coffin was followed by many people to Oakdale Cemetery. The *Richmond Sentinel*, after giving a full description of the ceremony, added: "Rain fell in torrents during the day, but as the coffin was being lowered into the grave the sun burst forth in the brightest majesty, and a rainbow of the most vivid colours spanned the horizon. Let us accept the omen not only for her, the quiet sleeper, who after many storms and a tumultuous and chequered life came to peace and rest at last, but also for our beloved country, over which we trust the rainbow of hope will ere long shine with brightest dyes."

Soon after the *Alabama* had been destroyed in the English Channel by the *Kearsage*, the ship *Sea King* took the sea to prey on what was left of the mercantile marine of the Northern States. The secret of her building equipment and destination had been well kept, and no one seemed to have any suspicion of her enterprise. The *Sea King* was built at Liverpool under the supervision of

Captain Bullock, and in September 1864 sailed for Madeira under the command of Captain Corbett, an Englishman. There she was met by another ship called the *Laurel*, laden with guns and stores, which were successfully transhipped on to the *Sea King* off Desertas. Then the Confederate flag was hoisted on the ship, her name was changed to that of the *Shenandoah*, and she sailed as a cruiser in the service of the South. Some of the crew of the *Sea King* consented to serve on her, and several of the old *Alabama* men who had gone out on the *Laurel* also joined. At the close of the war the Government of the United States pressed for the prosecution of Captain Corbett, and he was indicted under the Foreign Enlistment Act on a charge of having persuaded the men of the *Sea King* to serve in war against the United States. Captain Corbett was tried at Westminster before the late Lord Chief Justice Cockburn. It was the first important case in which I had a brief. The Crown was represented by the Attorney-General (afterwards Lord Monkswell) and by Mr James Hannen (Lord Hannen). The defence was

conducted by Mr Edward James, Q.C., and Mr Kemplay of the Northern Circuit. We called sundry witnesses for the defence, and among them four of the crew of the *Alabama* who had been enlisted on board the *Shenandoah*. My leaders gave me the opportunity of examining three of these men, and the second of them was a gentleman of piratical appearance, with an immense shock of black curly hair and a large scarlet necktie. When asked a question he stared at me and then at the judge and at the jury, and after making a terrific noise low down in his throat spat across the court to a distance of about six feet. To my intense relief Sir Alexander Cockburn threw himself back in his seat and burst out into a jovial laugh, and everyone followed suit. The witness remained absolutely calm, apparently unconscious of the cause of our hilarity. When his evidence was concluded the Lord Chief Justice asked if there was any more evidence, and on my replying, "Yes, my lord, one more witness," he said, "Exactly like the last, Mr Witt?" These witnesses had been under the care of Mr Thomas Rawle, who was then an articled

clerk to Messrs Gregory Rowcliffes & Co., of 1 Bedford Row, and is now the head of that eminent firm, and was last year President of the Incorporated Law Society, and a nice task he had. "If," said he to me, "I do not give these *Alabama* men liquor they will desert, and if I give them all they want they will be too drunk to give evidence." But he managed them splendidly. Mr Hull, the Liverpool solicitor, said, "Some of these men are really Southerners, but the battle between the *Kearsage* and the *Alabama* was only a fight between two sets of Liverpool boys, and that is why it was such a good one. I believe that Mr Rawle and I are the sole survivors of that memorable trial, which resulted in a verdict of "Not Guilty."

Some time after the war was over Mr M'Rae became the involuntary exponent of important principles of Equity in the courts of this country. In 1867, Vice-Chancellor Wood was called upon to decide a suit between the Government of the United States and Mr M'Rae. The Bill in Equity in substance alleged that the defendant had been the agent in receipt of large sums of

money, and of large quantities of goods sent and consigned to England by the pretended Confederate Government, and that the property of such Government was now vested in the plaintiffs, who required the defendant to render an account of all such monies and goods and pay and deliver over the same to the plaintiffs. Now Mr M'Rae had had control not only over the proceeds of the Confederate Loan of £3,000,000 sterling, but also of big shipments of cotton, which had from time to time reached Liverpool on board the blockade-runners. I do not for one moment suppose that he would, except on patriotic grounds, have objected to render such an account if the Government of the United States had on their side been willing to treat him as his own Government would have done, because Mr M'Rae had in fact dispersed all that came to his hands in the service of the Confederate States, and he was a man absolutely incapable of dishonourable conduct. But the United States might and would have said, "We do not recognise your disbursements; they were all in furtherance of acts of treason. Pay up without

deduction." Mr M'Rae put himself in the hands of Mr Benjamin, who drew a plea to the bill, alleging on behalf of the defendant that Congress had made a law rendering all the defendant's property liable to confiscation, and that proceedings had been instituted and were pending in the District Court at Montgomery in the State of Alabama, to secure the confiscation of the defendant's landed estate in Selma in the county of Dallas in that State, and that the defendant could not answer the interrogatories filed or make answer to the bill without exposing himself to the confiscation of his property, and that it was contrary to Equity that the United States should obtain relief in the suit without first pardoning the defendant and releasing him from the forfeitures. The Vice-Chancellor upheld this plea as a complete defence to the bill, but on appeal the Lord Chancellor (Lord Chelmsford) ruled that although the plea entirely defeated the claim of the United States to get discovery from the defendant, yet if they could prov their case by evidence without discovery, they had a right to go on with the suit

and do so. In 1869 the suit came to a hearing. The Vice-Chancellor, Sir W. M. James, asked Sir Roundell Palmer, who appeared for the United States, if he would have the account taken as if it was between the Confederate Government on the one hand and the defendant as agent of that Government on the other, and to pay what, if anything, might be found due from the Government on the footing of such account; but the learned counsel declined to accept the decree in any form which would recognise the authority of the belligerent States or involve any payment to their agent, and thereupon the bill was dismissed with costs.

This case probably explains why our Government never attacked Paul Kruger in the Belgian courts, so as to make him account for the gold which it is alleged that he took with him when he fled from Pretoria. Our Court of Chancery had dealt with a somewhat similar case in 1866. The United States had filed a bill against Mr Charles Kuhn Prioleau to establish their rights to certain bales of cotton shipped at Galveston

and consigned for sale in Liverpool for the benefit of the Confederate Government. Then Mr Prioleau filed a cross bill against the United States and President Andrew Johnson for discovery in reference to the matters in question in the principal suit, and it was held that although a Republic could not be in a better position than a foreign sovereign suing in an English court, yet the President was not a person who could be selected by Mr Prioleau as the proper person to make discovery. The learned judge shrewdly said, "The Court cannot take judicial notice; nor do I suppose that it is a matter of fact that the United States Government have control over their President or can compel him to produce papers or the like." The notion that Mr Lincoln, Mr Andrew Johnson, or the great man who is now President of the United States could be compelled to do anything that he did not wish to do, would probably strike any American as a sublime sort of joke. Certainly no American would be a party to any such compulsion on the suggestion of a foreign court.

CHAPTER V

THE SINS OF THE LAW

THE Common Law of England tempered with Equity constitutes the highest expression of human reason and morality. The laws made from time to time by Parliament are for the most part opposed to good sense and morality.

There must be a Parliament. Its primary office is to prevent arbitrary power in man or multitude, to hear grievances, to determine after what manner and by whom the country shall be ruled. History teaches that these duties have been discharged splendidly. Every man of right mind does his best to secure that Parliament shall go on with this work. Other nations follow its example, and strive to emulate it.

Lord Palmerston understood and upheld the dignity and authority of Parliament. He also appreciated its follies. He never,

with the notable exception of the Probate and Divorce Acts, indulged in legislation if he could help it. He knew that statutes as a rule do much more harm than good. .

Why does every session bring forth a crop of Acts altering the general law of the land? The answer is that no Government can afford to produce a king's speech without a list of projected statutory reforms. It would be like a public dinner without a toast list, a race meeting without a card, a play without a programme. Think of the Opposition. "Here is a Government without a policy. Where are its measures for the reform of abuses? where is its constructive legislation? what heed does it give to the crying needs of the people?"—away with it, and away it would go.

There have been many statutes of extraordinary beneficence, but they have been Acts to repeal wicked old Acts. For example, Acts to relieve Catholics, Nonconformists, Jews and Quakers from pains, penalties and disabilities imposed in bad old times by malevolent kings and yet more malevolent priests; Acts to get men out of

prison, who would otherwise have been kept there by cruel despots and yet more cruel creditors; Acts to prevent rich men from fixing poor men's wages, or regulating their dresses, or determining the prices of goods in defiance of laws that will not be defied. All these are Statutes to knock down something already put up, and only prove the folly and injustice of older law makers.

In the reign of Charles II. an Act was passed which arrogated to itself the dignity of stopping frauds. So it said: "You shall not bring an action to get damages for a breach of a contract which it will take you and the other man more than a year to perform, unless it is put in writing." In those days the plaintiff and the defendant could not give evidence, because being interested they were sure to tell lies. Of course they can now be witnesses. So if you have oath against oath as to something to be done within three hundred and sixty-four days it is all right, but if it will take three hundred and sixty-six days, no writing, no case. Again, by the same Statute, if you assert that you have agreed to sell a man goods worth

£9, 19s. you may swear against your buyer, and he against you as much as you both like, but if the goods are worth £10—no, you have to show a writing, or a token, or delivery of the whole or part. If you look at a text book you will find dozens of pages explaining these provisions, and references to thousands of judicial decisions about them. A fine harvest for the lawyers, but a bare wilderness to the suitors.

There had been at least a dozen Statutes relating to bankruptcy and insolvency before 1883, when the present Statute was passed at the instance of Mr Chamberlain. I suppose that if imprisonment for debt had been swept away one hundred years ago, there never would have been a Bankruptcy Act. The old Romans had some sense. They said to the creditor, "Here, take this debtor and set him to work until he has earned enough to pay you off." The English people said, "Put him in prison and keep him there, so will he be for ever unable to pay you, but you will have the delight of knowing that he is there for life."

This practice shocked mankind, and so

Parliament said, "Let him give up all he has, divide it among his creditors and let him go out of gaol," and it further said, "If he does give up all he has, release him from his debts." Now I have never been able to make out why one man in a street should go free of his debts while his neighbour pays up in full. What a delightful incentive to dishonesty. Nor do I understand why a creditor should, under any circumstances, be able to put his debtor into prison. One hundred years hence historians will justly speak of imprisonment for debt as a "relic of barbarism." If a man were to call his creditors together and say, "I must stop payment, but my business is a good one, and if you will all agree to give me time and let me go on I believe I shall pull round," and they choose to agree, that is their affair. In days of old such a plan was common enough, and the debtor got a letter of licence, forms of which can be found in old books. So also if the creditors agree to divide up their debtor's property and release him, that again is their affair. But no—because the creditor could seize the un-

fortunate debtor and imprison him for life, Parliament instead of saying, "You shall not do such a wicked thing as that," said, "Is he a gentleman? Yes? Then here is an Act for the relief of gentlemanly insolvent debtors." Or, "Is he in trade? Yes? Then make him a bankrupt." And then Parliament proceeded to pile Ossa on Pelion and Olympus on Ossa in the shape of pages and pages of statutory stuff, which it cost thousands and thousands of pounds to explain, and all of this cost came out of the pockets of the wretched creditors. Before they got anything, the Treasury took a dip for fees, and then came counsel and solicitors and accountants until an estate which ought to have paid, say, fifteen shillings in the pound, emerged with two shillings and elevenpence, payable in three instalments over a period of four years. In 1849 a fresh effort was made, and some years later Lord Westbury tried his hand, and in those happy days a debtor could get a deed written out, and have it executed by his cook and his housemaid and three or four friends as creditors, and then say to the rest, "Look

here, a majority in number and two-thirds in value of my creditors are ready to release me at half-a-crown in the pound. You can sign it if you like, but if you do not it does not matter to me, because you are in a minority." Thirty or forty years ago these dreadful deeds used to be pleaded as defences to actions, and counsel were driven wild with efforts to support or upset them. The scandal became at last outrageous and they were consigned to utter darkness. But the frauds which were committed under that law demoralised thousands of people. There were fictitious creditors, debts falsely multiplied by five or ten, persuasion and bribery to sign—every imaginable iniquity, all the necessary results of so wicked a law. · Well, now we have a perfect law of bankruptcy, just twenty-two years old. We have also a beautiful new building in which to administer it, a judge, a staff of registrars, a small army of clerks, counsel whose ability and knowledge of the law of bankruptcy takes away the breath of ordinary barristers, and, of course, solicitors and accountants. The building has to be paid for, or rather

the interest on the money by which it was erected, together with all the official staff. I suppose that the Treasury fees have to carry this load, and besides this burthen there are still enormous costs loaded on to these miserable estates.

We have also that most amusing performance, the public examination of the bankrupt. It was a delight to me to see the late Mr Aldridge at this task. For a long time I could not make out why he gave some of the bankrupts a tremendous dressing, and why some got off with two or three gentle interrogatories. At last an explanation presented itself. One fine September day I met that most worthy gentleman at a shooting lunch. Then came my chance. I explained to the party that when Mr Aldridge had a touch of gout or indigestion, and had been unable to enjoy his breakfast, he came down to court and relieved his feelings by a severe cross-examination of the unlucky debtor, and that on the other hand, when he felt spry and cheerful, the bankrupt got off comfortably. Then Mr Aldridge exclaimed, "There is a lot of truth

in what he is saying." . Even cabmen have a fair idea of the farcical character of the proceeding. One of these worthy men had driven the bankrupt a distance of one mile, seven furlongs and a half, and had received at the door of the court what is known as a "hard shilling." "Well," said the cabman, "I do hope that you will get your discharge; they cannot say that extravagance has done it." I had a call from a lady who explained to me that her gallant husband had passed an excellent examination. I asked if it was for his promotion to be major of the regiment. "Oh, no," said she, "I mean his examination in bankruptcy." There are, however, lectures from the registrar and suspension of certificates of discharge for two or three years, so that we have ever with us the undischarged bankrupt, whose wife or friend, male and female, carries on a business singularly like that of the bankrupt, with the "undischarged gentleman" as agent or manager. There is no doubt a beautiful Act which says, that if this gentleman gets credit for more than £20, without explaining his little misfortune to the creditor, he is guilty of a misdemean-

our. Now and then some simple-minded tradesman has the "gentleman" up before a jury, and pretty often gets told by the judge that he is wrongfully putting the criminal law in motion to squeeze money out of the prisoner, and the jury is advised to say "Not Guilty." Yet the Inspector-General treats this Statute as sufficient protection to the tradesman in his last report, and calls it a stringent penal enactment, but that gentleman manifestly does not attend sessions. In his simplicity he adds that "There is a steady decline in the desire of bankrupts to obtain their discharge." But it is said, "How important it is to effect a fair division of the property of the insolvent debtor." That is of course an ideal object. To carry it out there is a prohibition against what is called "fraudulent preference"; which means this, that if the debtor has borrowed £100 of his best friend, and is bound by the most sacred bond of honour to pay it back, that bond constitutes absolute proof that he, the debtor, has fraudulently preferred to pay his friend rather than his enemies. Well, there are hundreds of cases about this

fraudulent preference, containing sublime distinctions between "motive," "view," "intention" and "object," with dissertations as to what was in the debtor's mind, and what the judge ought to say to the jury if there is one, and what he ought to say to himself if there is no jury; and on the top of it all, it is supposed to be a question of fact, and not of law, whether there was such a fraudulent preference or not.

Another admirable illustration of the success of the law in dividing a bankrupt's estate among his creditors may be found in the tender regard of the courts for marriage settlements. Advice to everyone about to marry: "Execute a covenant to bring into settlement all your after-acquired property. Go into trade, and if things look bad stir up the trustees of the settlement to insist on an assignment to them of every bit of property you may have by way of performing—or, as the Scotch lawyers have it, of 'implementing'—your covenant." Of course this plan involves keeping on good terms with your wife, for she may leave you out in the cold, which perhaps would be worse for you than the

frigid aversion of defrauded creditors. All this is glorious fun for the lawyers and grand exercise for the intellect, but it is poor sport for the creditors. · Then there is a delightful doctrine that the title of the trustee relates back to what is called an "Act of Bankruptcy," and there have been hundreds of cases about that, and again the creditors have to pay the expense of all this profound learning. It has been laid down solemnly from the Bench that Mr Chamberlain's Act of 1883 is a new code of law, and that its language is not to be governed by reported decisions on older Statutes. Nevertheless, the standard book on Bankruptcy Practice consists of 659 pages and contains references to more than 1600 cases. These at the modest estimate of £80 per case for costs, show a charming total of £128,000 expended in efforts to find out what Parliament meant.

No doubt the idea of abolishing bankruptcy law and all its works would be terrible to a host of people. But if I were a creditor I should like to be able, if I chose, to get a judgment against my debtor, and have execution and the fruits of it. If I got

there first I should be paid. If someone managed to be there before me he would be paid. Anyhow, someone would be paid, which to my mind is better than no one being paid. But I suppose too many worthy folk have a "vested interest" in the present state of things to permit of such a revolution as would be effected if the rule was "first come first served," and no absolution from debt except payment.

These reflections lead me to those marvellous concoctions known as the County Courts Acts. If I were a politician and had to make an appeal to the *vulgus*, I should put at the top of my address "Away with the County Courts." Lord Brougham, who was a rare man for "firework" legislation, was their first author. In those days the old Sheriff Courts dealt with a host of small actions, and my lamented friend, Mr Thomas Apps, one of the most able and famous of our London solicitors, used to recall the time when he spent four days a week at the Sheriff's Court in Red Lion Square fighting small debt cases. An unpretentious Statute to regulate and possibly enlarge the juris-

diction of those ancient courts would have been useful, but then there would have been no glory and no patronage. So a big Bill was introduced with plenty of tall talk about bringing justice to every man's door, as if justice was a thing people wanted as they do their milk in the morning; and there was a beautiful little sinecure office called Treasurer-ship of the County Courts, and it carried a salary of £2500 a year, and the only man in all England who was capable of filling the office worthily happened, by a sort of miracle, to be near of kin to the Lord Chancellor of that day.

Now there are two principles in the practice laid down by the Country Courts. The first is that if a man is wholly unable to pay one pound to his creditors there shall be judgment against him to pay one pound four shillings. The second is that the creditor may frighten the debtor, his wife and children with the threat that the debtor will or may be sent to gaol if he does not pay up. If you read *Truth* and its weekly pillory you will find out that in many parts of England you may knock a man about as

much as you like for forty shillings, that is, if the justices are of a good old-fashioned sort. But if you owe thirty shillings, why, you may get a month in gaol if the County Court judge is a bit of a disciplinarian, and has all his life had plenty of money with which to pay his tradespeople. I have read a lot of letters in the newspapers alleging that debtors are only sent to prison when they are obstinate and wilfully refuse to pay. I am quite sure that such statements are not true, and I appeal to a most able letter from the pen of Sir Richard Harington, published in *The Times* of the 1st December 1904, which supports my allegation. Here is also further evidence. In the year ending 31st May 1904, according to the Blue Book (22,737), 18,022 persons were imprisoned as debtors or on civil process. This last category, of course, would account for a small fraction of the number. Can one conceive anything so monstrous as to reduce 18,000 persons to idleness for fourteen days or a month, to lodge and feed them as criminals at the expense of the community at large, not at the expense of the particular

creditor, merely because tradesmen have been so foolish or so wicked as to sell to them or their wives goods on credit?· "To what an extent this mischief (*i.e.*, the credit system) proceeds," says Sir Richard, "may be shown by reference to Birmingham, the largest of our County Courts. In 1903 more than 67,000 actions for sums under twenty pounds were entered in that court. I cannot vouch for the population of the district with accuracy, but I believe it to be under 600,000. If this is so, more than one person in nine out of the whole population was a litigant in respect of a small debt or claim."

There is a wise act of Parliament which says that no action shall be brought to recover a debt for beer, stout, or cider sold by retail. That law is a boon to publican and customer alike. There ought to be a law that no action shall be brought to recover the price of goods sold by retail for less than five pounds at one time ; of course that would be a nasty knock for the County Courts, and a good job too. To my mind nothing can be more dreadful than for a man who cannot earn more than thirty shillings a week, to

have a judgment debt for things long ago used up hanging round his neck, with the perpetual dread of the creditor trying to get him committed to prison. If the debtor has any property, let the creditor sell him up, but do not let the creditor lock him up. There are County Court judges who feel the iniquity of the system, and to alleviate the evil they break the spirit of the law by parcelling the debt out into instalments and making orders, under which the creditor will have to live many years before he gets paid. But this must be wrong, for it can be no business of the judge to consider how the debt was incurred. He has no right to distinguish between a loan at sixty per cent., and a loaf of bread, and yet being a man of mercy he does. I will not stay to criticise those courts in cases where larger sums are in dispute. They are supposed to be cheaper than the High Courts. Well, in one way they are, because the advocates who attend them, are grossly underpaid. But the extortion of the Treasury is shocking. The fee on a plaint for forty pounds in the County Court is forty shillings, and the hearing fee is

also forty shillings. The fee on a writ in the High Court for a million of money is ten shillings and at the Assizes the hearing fee is ten shillings and sixpence, with thirteen shillings for the jury. The last object of taxation ought to be the suitor in the court to which the poorer classes are invited or compelled to resort. Courts of the law do not exist for the suitors only. Their value consists quite as much in that they are beacons and warnings to people to do what is right as in their power to adjust disputes between actual litigants. Therefore it is not equitable that the burden of their maintenance should fall wholly on those who use them, even though that burden may fall on the most helpless class of people.

Twenty-seven years after Parliament had flogged the humble folk with whips in the County Courts, it seemed desirable to flog the wealthier folk with scorpions. The old Courts of Queen's Bench, Common Pleas, and Exchequer, and the Court of Chancery had one notable defect—the courts of law would not do Equity, and the Court of Chancery would not administer law. In

that state of things a simple person would have said, "Bring in a Statute to tell the court of Chancery not to send the suitor to Westminster Hall when his case wants law, and tell the judges in Wesminster Hall not to pack the suitor off to Lincoln's Inn when his case requires Equity." The thing will not often happen, as his advisers generally know what is the proper remedy, but it may happen. If law and Equity conflict, let Equity have the better of the law. If there are some few cases, as there were, in which this rule is not desirable, say what shall be done. This could easily have been managed, and in fact there are two sections in the Judicature Act of 1873 which perform the feat. Apart from this modest but useful reform, there was really no cause for change. The practice in all the courts was well settled, and only wanted some amendments of no very great difficulty. But there was no immortality of renown to be got out of useful and unpretentious legislation of this kind. There must be something heroic, grand, magnificent. All the courts were thrust into a huge cauldron, out of which, after much simmer-

ing, came a Supreme Court, not yet visible to the naked eye, divided into the High Court and the Court of Appeal, both of which are very visible. Then the High Court was subdivided into law and Chancery, and the business was distributed much as before. Besides the Statute there was a bran new practice, which like a badly cut coat has been tried on over and over again, slashed about, stitched up, altered, patched, until there is very little of the original garment left. The book which explains this practice contains 1743 pages, and the number of cases decided by the courts to explain the rules exceed 7000. Putting the costs of these at £50 a case, we get £350,000 as the price paid by the long-suffering Englishman, not for getting his cases decided, but for finding out the method by which they should be decided. This is a pretty sum to pay for a judicial revolution which only one man wanted and which nearly everyone now deplores. However, it is not much worse than the building in which the modern dispensation abides.

It occurred to some legal genius that there

might be a short cut to a result where an action was brought to recover a debt, and where there was reason to suppose that the defendant was in opposition to the plaintiff only to gain time. So an application to sign judgment off-hand was allowed. The first application with which I had to deal when this rule was made came before a judge who is not now on the Bench. I went into his room at Judges' Chambers and said, "My lord, this is a summons under the new order framed for the better encouragement of wilful and corrupt perjury," and I am bound to say that the learned judge did not dispute that description. Human nature being what it is, a defendant who wants delay will make an affidavit to gain time, and will strain his conscience, if he has one, considerably in the assertion to which he deposes. There may have been one or two cases of indictments for perjury committed in the affidavits, but they have been very rare indeed. Practically there is impunity. Who is to blame? The defendant, who is like a rat in a corner, or the framers of a rule which encourages the plaintiff to put him there? I do not

know anything better calculated to break down the barriers of truth than compelling a suitor to swear to a defence at the inception of the litigation. This is the sort of legislation which spreads immorality wholesale, and reduces what ought to be sacred down to the level of common form. It would be a modest estimate if the untrue affidavits made under this procedure since it was established were numbered at 200,000. How can it be to the advantage of the community at large, that for the mere purpose of a plaintiff, who has chosen to give credit instead of insisting on cash, bringing his debtor to book four months sooner than he would in the ordinary course, wholesale temptation to lying should be held out? No greater injury can be done to the cause of truth than to have a system under which wrong-doers can say, "Oh, there is nothing in it, because everyone does it." You may read in legal annals about the men of straw, "who stood in Cursitor Street ready to make affidavits," and you may feel shocked at the ways of old. But I see no difference in principle. Then, as now, the crime was in

the system, not in the miserable men who gave way to its inducements.

In the year 1862 Lord Westbury passed through Parliament the Act for the regulation of Joint Stock Companies with limited liability. The idea was right enough, because on the one hand the commerce of the country could not any longer be carried on by private partnerships, and on the other hand unlimited liability was inexpedient and unjust, when the investor could not possibly see after the business himself. But instead of saying that these companies should only be permitted where there was a large amount of paid-up capital, where, in fact, you had to deal with concerns beyond the means of individuals, the law allowed a company to be formed of seven persons at a pound apiece. Since 1862 the legislature has been at enormous pains to scotch the monster, which it had then created, but with very indifferent success. In 1867, 1870, 1880, and three times in 1890, Parliament tried its hand at amendments of the first Statute. The leading text-book on these seven Acts contains 800 pages and is adorned with more than 4000

decisions of the courts on the meaning of the Statutes. How many volumes would it take to describe the robberies which have been perpetrated under these laws, robberies which for skill and audacity have no parallel in any period of history? Who can depict or even imagine the tears, the misery, the abject despair of the victims of this legislation since the second day of November 1862? A huge army of widows and orphans, of clergymen, of foolish men of all sorts and conditions, dazzled by bright advertisements of promised wealth, and enticed to hand over their savings in the vain hope of rich dividends, rises up in judgment against these Statutes and the men who passed them. Imagine a Parliament which suppresses a lottery for a fat goose in a public house, and creates the company promoter and the guinea pig. I have said that there may be a company of seven subscribers, and of course these may be an undischarged bankrupt and his wife and five members of his family, and then the family may put £500 a piece into the concern as capital, and each hold a debenture for £500

over all the stock and assets of the company, and the company may get goods on credit and incur all sorts of liabilities. Then when creditors issue writs, the debenture holders appoint a receiver, and he swoops down on all the assets, and the happy family laugh at the creditor, whose execution is idle and who cannot even have the satisfaction of menacing any of the family with imprisonment for debt. So also one man may constitute the company and do exactly as he pleases with it, the other six being mere names at a pound a piece, and he may run the company with or without capital, and if profits are made he gets them, and if losses are incurred he mocks at the creditors. Of course there is the promoter, whose works are pretty well known by this time, and there is that dangerous man, who "reconstructs" companies. This operation is performed by telling the shareholders that, if a new company is made out of the old one, and each shareholder contributes five shillings in respect of each of his shares by way of new capital, a great and glorious future awaits the enterprise. The silly gambler sends his good money after bad,

and the "reconstructor" rejoices. These are only examples of mean and sordid frauds, but they are the things which familiarise people with dishonesty under the mask of business "according to Act of Parliament." But wickedness is not worked with impunity. Mr Satori Kato, in *The Times* of 10th September 1904, writes: "The cautiousness of investors, which is so marked a phenomenon in England at the present time, has not been caused either by the South African War, nor is it an echo of current events in the Far East. To me it seems that the cause should be sought in the mushroom growth of companies of every sort, the lack of commercial probity on the part of so many company promoters and other interested parties, which has brought wealth to a few and loss and even ruin to many. The law in Japan provides that no limited liability company shall commence business unless one fourth of its capital has been paid up, and the 'watering' of shares or provision of bonuses can be executed in very rare cases. We have, therefore, but few failures of companies."

Eleven years ago Parliament, in one of its

hot fits of virtue, passed an Act intended to check betting. The effect of it is that if I ask a man to back a horse for me, and he does so, and the bet is lost, and he pays for me, I need not make the money good to him. So also if I have made the bet myself and have lost, and being in want of cash I ask my best friend to pay it for me, and he in the goodness of his heart does pay it for me, I need not repay him. On the other hand, if I ask my friend to make the bet for me, and he does, and I win, and he receives the amount of the wager, I can make him hand over the amount to me. Therefore I have the sanction of Parliament for the commission of a most immoral fraud, for what can be worse than to encourage a man to cheat another like this? Who would not condemn as dishonourable in the highest degree a man guilty of such conduct? And yet he could aver in his defence that he had done no more than Parliament had prescribed. The Chief Justice of the year 1892 said, "If one man chooses to trust another in matters which are called matters of honour, he must do so at his own risk and with full knowledge that he

must suffer if the person whom he has trusted chooses to repudiate what is called his debt of honour." Quite so, but how does this observation meet the case when the law does not leave it to the honour of the friend to pay over what he has received upon the winning of the wager, but compels him to do what is just? Of course the Act does not extend to Stock Exchange gambling. Oh, no! If a time bargain is made by a broker for a customer, the latter has the law on his side when the gamble turns out well, and the broker has the law on his side when the thing goes wrong. But then that is called speculation, not betting, and even the clergy do not preach against it.

"Nothing worse can happen in a free country than to force people to be churlish about their rights for fear that their indulgence may be abused, and to drive them to prevent the enjoyment of things, which, although they are matters of private property, naturally give pleasure to many others besides the owners, under the fear that their good nature may be misunderstood." These are wise words and worthy of their author, the

late Lord Bowen. But when the Local Government Act was before Parliament there was a splendid disregard of all such ideas. In the supposed interests of a down-trodden public large powers were given to local authorities to assert and maintain in the courts of law alleged rights of way over private lands. To the best of my recollection such law-suits as have been fought have been determined for the most part in favour of the landowners, and enormous burthens have been thrown on the rates to pay the costs of the litigation. That, however, is a small evil. The mischief is that "people have been forced to be churlish," and have been driven to stop the passage of the public over land, where before the Act all the neighbours were allowed to go, and in many parts spaces, hitherto left open for healthy and pleasurable exploration, have been enclosed to prevent the application of the process by which under our law "a robbery may by the lapse of time become a right and a trespass an easement." Parliament has driven landowners to close their gates to preserve their property, in fear lest the District Council

should construe acts of kindly courtesy into admissions of public rights.

The principle that if a workman is injured in the course of his employment he shall be maintained for a time, or if he is killed that some reasonable compensation shall be paid to relatives who were dependent upon him, may fairly be accepted, but what can be worse than to say to him, "You have been hurt; here is balm for your wounds," and then to hand him a lawsuit, starting at the County Court and going thence to the Court of Appeal, and thence to the House of Lords; and if he is killed to offer the same boon to his widow and orphan children. We see the employer only too willing that money should be paid, but the employer has delivered himself over body and soul to an Insurance Office, which does not pretend to have a soul. The workman has invoked the aid of his Trades Union, and so there is a campaign between the latter and the Insurance Company, in which defeat in the Court of Appeal is perhaps followed by victory in the House of Lords. The *Law Reports* are full of these

cases, text-books have been written about the construction of the two Statutes, and certain counsel have made a speciality of their study. If I insure myself against accidents, the Insurance Company, whose policy I hold, does not want to know whether I was hurt in a building thirty feet high, or whether I was on a ship in a dock under such circumstances that the ship was or was not a warehouse. The company only requires proper evidence that the policy-holder has been hurt, and then pays up. When I explained the effect of the Workmen's Compensation Act to a countryman, he said to me, "What sort of people are they that sit in Parliament and make such laws? Why, there ought to be insurances against these accidents." It would not have passed the wit of man to devise a system of insurance which would have obviated the scandal of these innumerable and extravagant law-suits in pursuit of a laudable object. If we did not know better, we should think that the House of Commons was so enamoured of the lawyers that it was moved by anxiety to provide the

courts with business when slackness is apprehended.

The free Briton is always ready to gibe at the much-governed Teuton, but we are rapidly catching up the German system of parental or rather grandmotherly interference with the liberty of the subject. Parliament loves to pass Statutes under which local authorities obtain all sorts of powers over the inhabitants of their district, and the courts are worried with controversies as to the validity of bye-laws framed by busy-bodies and narrow-minded faddists. A borough has a public library supported by a rate. Thereupon some Purists carry a resolution to black out the *Sporting Intelligence* in the newspapers, and I suppose that other advocates of morality by Act of Parliament will try to black out the Stock Exchange price lists; others the *Police News;* others the Divorce Court cases; and in the interests of economy the advertisements of milliners and dressmakers, except perhaps those of milliners offering ladies' hats at 7s. 6d., which my worthy friend, his honour Judge Bacon, has from the Bench declared to be the proper price.

One of the best illustrations of the folly of this class of Statutes is afforded by the case of Rossi *v.* Edinburgh Corporation, decided by the House of Lords in November 1904. The Scotch Courts appear to have a splendid method of testing the validity of acts done by justices, for they allow the aggrieved person to institute a suit and ask for a declaration, which is certainly better than our way of quashing orders by writs of *certiorari*. The good people of Edinburgh also had the luck to entertain an angel unawares in the person of a gentleman of public spirit, whose name seems to indicate descent from some tribune of ancient Rome. It appears that Parliament had passed an Act imposing a penalty for selling "ice-cream" in Edinburgh without a licence from the magistrates, and that Mr Rossi, the pursuer in the action, had applied for a licence. Thereupon their worships proposed to issue to him a licence to sell "ice-cream," but subject to various conditions. One was that he was to shut up his shop altogether on Sunday or other day set apart for public worship by lawful authority; another that he

must close his shop from 11 p.m. to 8 a.m. every night, another that his licence might be revoked or suspended at any moment. If, therefore, he or any other tradesman in Edinburgh wanted to add the sale of ice-cream to fifty or one hundred other commodities, he had to come under these conditions or forego the licence. So Mr Rossi brought his action to have it declared that the justices had no jurisdiction to impose all these conditions, and in the House of Lords his blow for freedom was struck to a grand purpose. Lord Halsbury said, "I confess for myself I am wholly unable to understand what question of public order arises in the sale of ice-cream; but I pass that by, because I do not know what was the occasion of this legislation. What is sought to be done is to restrain a common right which all his Majesty's subjects have—the right to open their shops and sell what they please, subject to legislative restriction." And Lord Robertson said, "The licence would compel a man, who had a general baking or confectionery business, to shut shop at the specified hours, merely because

one, and it might be an unimportant item of his business was ice-cream. If the legislature should in the future come to estimate the importance of ice-cream higher than it seems at present, it may adopt the strongest measure proposed ; but in the meantime the magistrates must be content to keep pace with the legislature." These are words of wisdom, but we cannot always expect to have judges so determined to keep under control the fantastic tricks of men dressed in a little brief authority.

Sir William Anson in his book, *The Law and Custom of the Constitution*, writes, "Mediæval legislation, where it was not simply declaratory of custom, was scanty, and to judge from the preambles of Statutes, timid and even apologetic. Modern legislation is restless, bold, and almost inquisitorial in its dealing with the daily concerns of life." One of the worst forms of this inquisition is the enormous increase in "officialdom." Just outside the great gate of Lincoln's Inn a big building is being run up at huge expense, in order that a pack of officials may try their raw hands at Government transfer of real

property, and supersede the skill and wisdom of counsel and of solicitors. If these officials manage to get the machinery to go, county after county will be invaded. This is only an example of the whole tendency of modern legislation, which is based upon the theory that an official, whose interest in work begins and ends with his salary, can do our business better than we can do it for ourselves. All this of course means curtailment of that individual liberty, which is the most precious of human rights. We can boast that we put down the Stuarts, that we have survived the oligarchy of the early Georgian Whigs, and the absolutism of the later Georgian Tories. These were political triumphs, and we have right to be proud of the men who achieved them. But our political liberty will be of small value if we are condemned to the loss of personal and civil liberty, and if Parliament goes on unchecked in its present course of legislation, we shall have to get up a new revolution, hang all local officials to the nearest lamp-posts, and make huge bonfires of rules, orders and bye-laws throughout the country.

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